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CLERK-MAGISTRATES IN PLYMOUTH, SUFFOLK AND WORCESTER COUNTIES: *Please review and implement this memorandum immediately. It includes procedures that are newly effective in your court on Tuesday, August 31, 2004 and that affect all civil complaints seeking money damages, and all summary process actions, filed on or after that date.*

M E M O R A N D U M

TO: District Court Judges and Clerk-Magistrates
FROM: Hon. Lynda M. Connolly, Chief Justice
DATE: August 25, 2004
SUBJECT: **Statewide Implementation of the Civil One Trial System**

Effective next Tuesday, August 31, 2004, the civil One Trial system, which has been in operation on an experimental basis for several years in the District Court and Superior Court in all counties except Plymouth, Suffolk and Worcester, will go into effect statewide on a permanent basis.

This expansion of the One Trial System to the remaining three counties was accomplished by St. 2004, c. 252, which was enacted on July 30, 2004 and signed by the Governor on August 4. An emergency declaration was signed by Acting Governor Healey on August 31, which permits the statute to go into effect (as provided in § 23 of the law) on July 31, 2004. An annotated copy of the law is reproduced beginning on p. 25 of this memorandum..

The enactment of this legislation is the culmination of an eight-year effort to eliminate the cumbersome remand/removal system, with its complex provisions requiring retrials and the transfer of cases back and forth between the District and Superior Courts. It is interesting to note that this legislation, which finally eliminates the civil trial de novo system, follows by ten years the elimination of the criminal trial de novo system. These events mark historic points in the evolution of the District Court into a court of final jurisdiction, with the responsibility and capacity to render justice in both criminal and civil cases, by jury trial when necessary, subject only to appeal on issues of law. We are grateful to all of those who worked over the years towards this important goal. Particular thanks are owed to Senator Robert S. Creedon, Jr. and Representative Eugene L. O'Flaherty, co-chairs of the Joint Committee on the Judiciary, and to the leadership of both the House and the Senate, who were pivotal in enacting the statewide expansion of the One Trial System.

The short timeframe between the statute's enactment and its August 31 effective date has precluded a more extended preparation period in the "new" courts in Plymouth, Suffolk and Worcester counties. Nonetheless, I am confident that we can implement the statute promptly in the three new counties, and that the One Trial System will prove to be as popular and successful there as it has been in the other eleven counties. I have asked our Committee on Civil Proceedings, chaired by Hon. Fredric D. Rutberg (S. Berkshire), to help provide additional guidance and training as we go forward.

Because the new system is effective on August 31, 2004 in the three new counties, it is important that the clerk-magistrates of those courts ensure that their staff members who will be responsible for implementing the new system familiarize themselves with the enclosed materials and forms promptly. It is particularly important to understand and implement the new "Statement of Damages" form, since the Bar's use of that form on and after August 31, 2004 is required for the commencement of any civil money damage case.

Clerks' offices in Plymouth, Suffolk and Worcester counties are requested to make photocopies available to attorneys of the one-page "A Brief Outline of the Civil One Trial System" (p. 6), the civil One Trial statute (pp. 25-38), new Joint Standing Order 1-04 (pp. 39-44), and the "Statement of Damages" form (p. 45). Copies of this memorandum will be available on the District Court webpage on the Trial Court's intranet (trialcourtweb.jud.state.ma.us) and internet (www.mass.gov/courts) sites. It will also be available to subscribers to the *Massachusetts Lawyers Weekly* internet site (www.masslaw.com). The text of the One Trial statute is separately available on the Legislature's internet site at www.mass.gov/legis/seslaw04/s1040252.htm.

One important change that is applicable in *all courts* on August 31 involves filing fees. See "Special Notice on Filing Fees" on p. 5.

For judges and clerk-magistrates in Plymouth, Suffolk and Worcester counties, the purpose of this memorandum is to ensure a successful transition to the new civil One Trial System by: (1) providing an overview of the new system, (2) explaining how the new system is to be implemented, and (3) transmitting copies of the new statute, standing order and forms, along with a one-page information sheet that can be distributed to members of the Bar.

For judges and clerk-magistrates in other counties, where the One Trial System has been successfully in effect since September 30, 1996 (Middlesex and Norfolk), September 1, 2000 (Berkshire and Essex), or April 1, 2002 (Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire and Nantucket), the purpose of this memorandum is to explain (1) the three important statutory changes in the One Trial System legislation, (2) changes in Standing Order 1-98, which provides the procedure by which cases move through the One Trial System, and which has been amended and re-promulgated as Joint Standing Order 1-04 (jointly applicable in the District Court Department and the Boston Municipal Court Department); and (3) changes in several of the One Trial forms.

These procedural changes in the existing One Trial System (summarized on pp. 7-11) are not of direct concern to the new One Trial courts, since personnel in those courts will have nothing to "unlearn." However, judges and clerk-magistrates from Plymouth, Suffolk and Worcester courts may also find the analysis of these changes of general interest.

I am distributing this entire memorandum to the existing One Trial courts, including the discussion of all of the procedures and provisions that have *not* changed, because it brings together in one place information that was distributed at several different times, and sometimes in slightly different form, in the past. Other than the changes mentioned above (and discussed on pp. 7-11), there are no significant differences from the procedures that have been in effect in courts with the One Trial System. For such courts, a review of what has not changed may serve as a useful refresher.

The central features of the new system are a single trial in civil cases and the availability of civil jury trials in the District Court. It is important to note, however, that while the creation and operation of civil jury sessions is central to the new system, it will *not* present our greatest challenge. As we have seen in the counties that already have the One Trial System, the District Court is fully able to conduct civil jury trials that meet the highest expectations of the law, the Bar and the litigants we serve. We know, however, that the actual number of such trials will be low. (In those counties where the new system has been in effect, jury trials have been required in fewer than 1% of total cases disposed.) The real challenge will continue to be the management of cases so that unnecessary delay is minimized, cases are not needlessly added to the trial lists, and cases that do require trials are reached promptly.

Our experience with the civil One Trial System over the last several years has been very positive and we look forward to its successful implementation in the courts of the three remaining counties. Thank you for your assistance in implementing this important reform in the history of the District Court, and thanks also to those judges, clerk-magistrates and court staff who have coordinated and monitored the new system, and made it work so successfully, where it is already in effect.

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SPECIAL NOTICE ON FILING FEES

While the new One Trial legislation was pending, District Court civil filing fees and surcharges found in G.L. c. 262, §§ 2 and 4C were increased by unrelated legislation, effective July 1, 2003. Unfortunately, those increases were not reflected in the One Trial law as ultimately enacted. Thus, many District Court filing fees have inadvertently been reduced to their previous levels. (The filing fee surcharges in § 4C remain at their increased levels.)

Corrective legislation has already been sought to restore these filing fees to their previous levels. Until the Legislature acts, District Court filing fees and surcharges, effective August 31, 2004, are as follows:

District Court Filing Fees **G.L. c. 262, §§ 2 & 4C**	***July 1, 2003 thru August 30, 2004*** *(St.2003, c.26, §§468, 496, 500, 501)*	***On and after August 31, 2004*** *(St.2004, c.252, §21)*
Civil Case	$180 plus $15 surcharge = $195	$150 plus $15 surcharge = $165
Summary Process	$180 plus $15 surcharge = $195	$150 plus $15 surcharge = $165
Petition for Waiver of 3-day Marriage Waiting Period (G.L. c. 207, § 30) or for Minimum Age of 18 (G.L. c. 207, § 25)	$180 plus $15 surcharge = $195	$150 plus $15 surcharge = $165
Supplementary Proceedings	$30 plus $15 surcharge = $45	$25 plus $15 surcharge = $40
Small Claim of $500 or less (G.L. c. 218, § 22)	$20 plus $10 surcharge = $30	*No change*
Small Claim of $501-$2000 (G.L. c. 218, § 22)	$30 plus $10 surcharge = $40	*No change*
Petition for Abuse Prevention Order (G.L. c. 209A, § 3)	$0	*No change*
Appellate Division appeal	$180	$100
Removal of Civil Case to Superior Court under G.L. c. 231, § 104	$180 plus $15 surcharge = $195	$150 plus $15 surcharge = $165
Retransfer of remanded Civil Case to Superior Court under G.L. c. 231, § 102	$0	*No change*
Approving Sureties on Bonds, except removal bonds to Superior Court	$60	$50

A BRIEF OUTLINE OF THE CIVIL ONE TRIAL SYSTEM IN THE DISTRICT COURT

St. 2004, c. 252 (effective August 31, 2004)

1. **Cases affected.** The One Trial System applies to *civil money damage actions* and *summary process actions* in all divisions of the District Court, Boston Municipal Court and Superior Court Departments.

2. **Effective date.** The new statewide One Trial statute applies to all cases commenced on or after August 31, 2004. Unlike the previous experimental legislation that consisted of Special Acts with sunset clauses, the new law sets forth the One Trial System by amending the General Laws, and thus has no termination date.

3. **Basic idea: one trial.** The One Trial System eliminates the remand/removal procedure and appeal to Superior Court for jury trial, and provides for one trial in either District or Superior Court, with a jury if properly requested.

4. **$25,000 "procedural amount," except for summary process.** The One Trial statute requires that civil money damage actions "proceed" in the District Court if there is "no reasonable likelihood that recovery by the plaintiff will exceed $25,000." However, the District Court has *jurisdiction* over money damage cases regardless of the amount involved, and the judge has discretion to permit an action to proceed regardless of whether the "reasonable likelihood" test is met. The $25,000 amount is no longer jurisdictional. *Summary process* actions may be brought in the District Court without regard to the amount of monetary damages.

5. **How is the $25,000 "procedural amount" determined?** In civil money damage actions:

   - Plaintiffs must file a detailed Statement of Damages with the complaint.
   - The Court *may* dismiss any action that does not meet the procedural-amount test.
   - It appears that the defendant must assert the defense of improper procedural amount in his or her answer.
   - A plaintiff whose case has been dismissed for improper procedural amount may appeal to an Appeals Court single justice, and the judge ordering dismissal must then make written findings.
   - The statute of limitations is automatically extended for 30 days to permit refiling of a dismissed action in the Superior Court.

6. **Case management.** A case management conference and, if necessary, a pretrial conference must be held before a case is put on a trial list. Detailed case management provisions are set out in BMC & District Court Joint Standing Order 1-04, "Civil Case Management." (This replaces former District Court Standing Order 1-98.)

7. **Jury sessions.** The Chief Justice of the District Court is to establish civil jury sessions and assign judges to those sessions. District Court civil jury trials are to utilize the same general trial procedures as in Superior Court.

8. **Appeal.** The One Trial System permits appeal of District Court cases on issues of law to the Appellate Division, followed by appeal to the Appeals Court.

9. **Equity jurisdiction.** The new law provides equity and declaratory judgment jurisdiction in the District Court in money damage and summary process cases. It also provides a new procedure for appeal of interlocutory equity orders to an Appellate Division single justice.

ANALYSIS OF CHANGES FROM THE ONE TRIAL SYSTEM PREVIOUSLY IN EFFECT

The One Trial System as it has operated in eleven counties prior to the new statewide law has been altered in several ways. This section of the memorandum provides an analysis of these changes, which consists of the following:

1. Statutory amendments:

   (a) The former "jurisdictional amount" has been changed to a "procedural amount."

   (b) A party to a civil money damage action may now bring an interlocutory appeal to a single justice of the Appellate Division from the grant or denial of a request for equitable relief.

   (c) The District Court now has jurisdiction to grant declaratory judgments.

2. District Court Standing Order 1-98 has been replaced by Boston Municipal Court Department & District Court Department Joint Standing Order 1-04. This new joint order has relatively few changes from its predecessor.

3. Changes in Forms. The forms to be used in implementing the One Trial legislation have been revised.

1. Statutory Amendments.

(a) Elimination of "Jurisdictional Amount" in favor of "Procedural Amount."

The most important change in the One Trial System under the new law is the elimination of the "jurisdictional amount." That is, there no longer is a jurisdictional divide under the One Trial System between money damage cases that can be heard only in the Superior Court and those that must be heard in the District Court.

Prior to the new law, cases governed by the One Trial System were within the jurisdiction of the District Court only if there was "no reasonable likelihood that recovery by the plaintiff will exceed $25,000." If such a "reasonable likelihood" were found to exist, the case had to be dismissed as being outside the court's subject matter jurisdiction. (This jurisdictional test will continue to apply to all cases commenced under the One Trial System prior to August 31, 2004.)

Under the new law this same dividing line applies, *but it is "procedural" rather than jurisdictional:* Money damage actions "may *proceed* in the [District Court] only if there is no reasonable likelihood that recovery by the plaintiff will exceed $25,000." G.L. c. 218, § 19, as amended by St. 2004, c. 252, § 5 (emphasis added).

Detailed, specific procedures were provided under the "old" law by which the jurisdictional amount had to be asserted by the plaintiff, opposed by the defendant, tested and determined by the court, and raised on expedited appeal if dismissal were ordered.

In contrast, the new law is somewhat vague concerning how and when the procedural amount may be challenged and determined. The following analysis is provided to promote uniform implementation of the new procedures. Final resolution may require appellate review.

Several points are clear. First, the clerk-magistrate "shall not accept for filing" any complaint unless it is accompanied by a Statement of Damages form. G.L. c. 218, § 12A (a), as amended by St. 2004, c. 252, § 6. It appears that the filing of this form is a legal prerequisite for proper commencement of an action, although the law does not expressly so provide. Obviously, this form will be the basis on which the defendant can raise and the court can decide whether the procedural-amount requirement has been met.

There is no requirement that the clerk-magistrate "review" the statement of damages form or make any determinations regarding its contents. The acceptance of the form (like the acceptance of the complaint) appears to be a ministerial act rather than one requiring review or approval, with questions about the adequacy of the form or whether it meets the procedural-amount test left to the adversarial system. Even where the bottom line on a Statement of Damages is an amount over $25,000, the role of the clerk's office staff appears to be limited to formal acceptance of the case filing.

Another clear point is that a judge *may* dismiss the case "after receiving written responses from the parties and after a hearing, if requested by any party" if "it appears to the court from the statement of damages by the plaintiff" that the reasonable likelihood test has not been met (i.e., that there *is* a reasonable likelihood that recovery by the plaintiff will exceed $25,000). G.L. c. 218, § 19A (b), as amended by St. 2004, c. 252, § 6. Thus, even if it is shown to the court that the claim is for an "improper" procedural amount, dismissal is a matter of the court's discretion.

Finally, it is clear that any challenge to the "procedural amount" is not jurisdictional and is waived if not raised before trial:

> "The procedures provided herein for dismissal of an action for violation of the requirements regarding the amount necessary to proceed in the district court or Boston municipal court departments under section 19 shall be the exclusive method by which the dismissal may be ordered. Violation of the requirements for proceeding in the district court or Boston municipal court departments shall not deprive the court of jurisdiction and shall not be grounds for any post-judgment relief in any case."
>
> G.L. c. 218, § 19A(b) as amended by St. 2004, c. 252, § 6

What is not clear is how and when the procedural amount may be challenged. The new law does not impose a duty on the judge to review the Statement of Damages *sua sponte*. (Nor does it expressly authorize such an approach or preclude it.) As a general matter, procedural challenges are the responsibility of the parties in an adversarial system. A passive role by the court is further supported by the fact that cases will proceed to judgment even if there is a defect in the procedural amount, since violation of the procedural-amount requirement "shall not deprive the court of jurisdiction . . . ." G.L. c. 218, c. 252, § 19A (b), as amended by St. 2004, c. 252, § 6.

It seems that the defendant must raise a challenge to the procedural amount or risk waiving this defense. It appears that Mass. R. Civ. P. 12(b) requires the defendant to raise such a challenge in his or her answer ("Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto"), since an alleged defect in the procedural amount does not seem to be among the defenses that Rule 12(b) permits to be pursued in a separate motion to dismiss. See also G.L. c. 218, § 19A(a), as amended by St. 2004, c. 252, § 6 ("The defendant may file with his answer a statement specifying the potential damages which may result if the plaintiff prevails").

If the defendant does not timely assert the procedural-amount defense in accordance with Rule 12(b), it would appear to be waived like other non-jurisdictional defenses. This is consistent with the provision in the law that a defect in the procedural amount "shall not be grounds for any post-judgment relief in any case." G.L. c. 218, § 19A(a) as amended by St. 2004, c. 252, § 6.

The law provides no criteria to guide the judge's discretion regarding dismissal – that is, whether the judge should dismiss the case if the defendant succeeds in showing, based on the Statement of Damages, that there *is* a reasonable likelihood that recovery by the plaintiff will exceed $25,000.

Since the District Court now has *jurisdiction* to hear and decide all cases regardless of amount likely to be recovered, that factor may generally favor denial of dismissal. A judge may take into account that dismissal will require repetition in the Superior Court of all the actions already taken in the case – the filing, court processing, service and return of service, the filing of an answer, etc. The waste of time and expense that will result from such a dismissal may weigh particularly strongly if the defendant provides no case-specific reason for dismissal, or if any recovery is likely to be only marginally over $25,000.

On the other hand, in a case in which any likely recovery would clearly be over $25,000, a judge acting *sua sponte* or in response to defendant's request to dismiss must also consider whether the statute intends that the choice of a jury-of-twelve in the Superior Court be left in the defendant's hands. A judge might also decide to dismiss for improper procedural amount if there is an already heavy caseload or personnel limitations in that court division.

If the court orders dismissal, the plaintiff may appeal this ruling to a single justice of the Appeals Court. Such appeal requires the judge who ordered the dismissal to provide written findings and reasons within three days of being notified of the appeal. Other detailed procedures for such appeal are set forth in G.L. c. 218, § 19A, as amended by St. 2004, c. 252, § 6.

By contrast, a judge's *refusal* to dismiss for a procedural-amount defect appears to be immune from review. "Violation of the [monetary amount] requirements for proceeding in the district court or Boston municipal court shall not . . . be grounds for any post-judgment relief in any case." G.L. c. 218, § 19A (a), as amended by St. 2004, c. 252, § 6.

(b) Appeal of interlocutory orders.

The other important change in the new One Trial law is the addition of an avenue of interlocutory appeal from a judge's order "issued pursuant to section 19C of chapter 218 in response to a request for equitable relief." Section 19C confers on the District Court in civil money damages and summary

process actions "the same equitable powers and jurisdiction as is provided for the superior court" pursuant to G.L. c. 214.

This new avenue of interlocutory appeal does not apply to interlocutory orders that are not issued in response to requests for equitable relief such as attachment orders. Interlocutory findings or orders other than those issued in response to requests for equitable relief may be reported to the Appellate Division by the trial judge, with a stay of further proceedings ordered pending decision by the Appellate Division, under G.L. c. 231, § 108. This provision has not been changed by the new law.

The provision for interlocutory appeal is set forth in a new section of the General Laws, c. 231, § 118A, as added by St. 2004, c. 252, § 16, and allows for such an appeal by an aggrieved party to a single justice of the Appellate Division. The appeal must be filed within ten days of the entry of the order. A single justice of the Appellate Division "may affirm, modify, vacate, set aside, reverse the order or remand the cause and direct the entry of such appropriate order as may be made under the circumstances." Section 118A also provides for further appeal from the Appellate Division single justice to the Appeals Court or the Supreme Judicial Court.

Administrative and procedural details for appeals to an Appellate Division Single justice – periodic assignments of a single justice in each Appellate Division district, how cases are to be transmitted to the single justice, how the hearing shall proceed – will be determined in the coming weeks with appropriate input from the members of the three Appellate Division districts.

(c) Jurisdiction for declaratory judgments.

The new law provides the District Court with jurisdiction to issue declaratory judgments within the context of money damages cases and summary process cases. The District Court now has:

> "the same authority with regard to declaratory judgments as is provided for the Superior Court pursuant to Chapter 231A for the purpose of the hearing and disposition of summary process actions and of civil actions for money damages under section 19 of this chapter."

G.L. c. 218, § 19C, as amended by St. 2004, c. 252, § 8.

2. New Joint Standing Order for Civil Case Management in the District Court and Boston Municipal Court.

A new Joint Standing Order has been issued to govern the movement of cases within the One Trial System in the District Court and in the Boston Municipal Court Departments. *Joint Standing Order 1-04, "Civil Case Management," goes into effect statewide on August 31, 2004 for cases commenced on or after that date. It also applies to cases commenced under the One Trial System prior to August 31 for any procedures in those cases that have not occurred prior to that date.* It can be viewed as the "operating system" by which cases are to move within the statutory structure of the One Trial legislation. The new Joint Standing Order has relatively few differences from its predecessor, Standing Order 1-98.

Standing Order 1-98 was designed to guide the movement of cases subject to the One Trial System in district courts previously governed by the "experimental" civil One Trial System, from

commencement to disposition, with minimal delay and expense. It has proved successful. Its successor is applicable in both departments because the courts in both departments are now governed by the same One Trial System. In addition, the civil subject matter jurisdiction of the two departments is virtually identical.

A copy of Joint Standing Order 1-04 is reproduced beginning on p. 39 of this memorandum, and is summarized in Q&A's 36-45, below. Those Q&A's also highlight the minor ways in which this new Standing Order differs from its predecessor. (These differences will not be of any interest to the "new" One Trial courts, for whom *all* of the provisions of the Joint Standing Order will be new.)

3. Changes in Certain Forms.

Sample forms for procedures under the One Trial System are reproduced beginning on p. 45 of this memorandum.

The change in the law from "jurisdictional amount" to "procedural amount" has rendered three previously issued forms inapplicable to cases commenced on or after August 31, 2004. These are the "Order Nisi for Dismissal for Want of Jurisdictional Amount," "Notice of Entry of Judgment of Dismissal for Want of Jurisdictional Amount," and "Transmittal of Appeal from Judgment of Dismissal for Want of Jurisdictional Amount" forms. Those three forms are applicable only to One Trial cases commenced before August 31, 2004. Copies of those forms are included in this office's prior memorandum, "Implementation of the Civil One Trial System" (Trans. 792, April 1, 2002).

The new "Transmittal of Appeal from Judgment of Dismissal for Want of Procedural Amount" form (p. 46) should be used only in One Trial cases commenced on and after August 31, 2004.

The other eight forms should be used in One Trial cases regardless of when those cases were commenced. These are the "Statement of Damages" form (p. 45), the "Order Nisi for Dismissal for Failure to Act on Default" (p. 47), the "Notice of Entry of Judgment of Dismissal for Failure to Act on Default" (p. 48), the "Notice of Case Management Conference" (p. 49), the "Case Management Conference Report" (p. 50), the "Notice of Pretrial Conference" (p. 51), the "Pretrial Conference Report" (p. 52), and the "Trial Order" (p. 53). These forms are to be used even in One Trial cases filed prior to August 31, 2004 because the new statute and standing order are also applicable to such cases "regarding any procedure occurring on or after that date."

QUESTIONS & ANSWERS
ABOUT THE CIVIL ONE TRIAL SYSTEM

The purpose of this section is to provide in question-and-answer format an analysis of the civil One Trial System, and to clarify some aspects of its orderly implementation. Many of the underlying statutory provisions are straightforward and unambiguous; others are open to interpretation. The interpretations provided in this memorandum are subject to change as issues are further clarified and as they are addressed in appellate decisions. Provisions in the law and procedure that differ from those under which the One Trial System has previously operated are identified as such.

Overview

1. Where can one find the text of the civil One Trial legislation?

The civil One Trial System is set forth in St. 2004, c. 252, which amends all of the relevant chapters and sections of the General Laws. An annotated copy of the law is reproduced beginning on p. 25 of this memorandum.

2. In a nutshell, what does the civil One Trial legislation do?

The central feature of the new system is the introduction of civil jury trials in the District Court, and the abolition of the current remand/removal system by which cases are transferred back and forth between District and Superior Court or appealed for jury trial in Superior Court. The new system applies to all money damages (tort and contract) actions and summary process (eviction) actions.

3. Which courts are involved?

Effective August 31, 2004, the civil One Trial System applies statewide in all divisions of the District Court, the Boston Municipal Court and the Superior Court Departments. In the District Court this includes courts in eleven counties in which the One Trial System has already been in effect and courts in three counties (Plymouth, Suffolk and Worcester counties) where it has not been in effect previously.

4. When does the new system end?

Unlike the previous sessions laws which enacted the new system in particular counties on an experimental basis with sunset provisions, the new law enacts the One Trial System permanently in all counties by amending the relevant sections of the General Laws.

Cases Already Pending on August 31, 2004

5. What procedures will apply to cases already pending on August 31 *in the courts that already have the One Trial System?*

The new law is applicable to these "old" One Trial cases "regarding any procedures occurring on or after August 31, 2004." St. 2004, c. 252, § 23. Since there are relatively few new procedures under the new One Trial law, this transition should not be difficult.

However, it would appear that this provision does not transform the *jurisdictional*-amount requirement in pre-August 31 One Trial cases into a procedural-amount requirement. Pre-August 31 One Trial cases will continue to be subject to the legal requirements, procedures, appellate relief and court forms applicable to the jurisdictional-amount provisions in the pre-August 31 One Trial law.

All cases under the One Trial System, whether filed before or after August 31, 2004, will be governed by BMC & District Court Joint Standing Order 1-04. See Q&A 37, below.

Some courts will also have pending cases that were commenced *before the experimental One Trial legislation went into effect* in that county. (For example, in the seven counties added to the One Trial System on April 1, 2002, cases that were filed before that date.) Any pre-One Trial cases must proceed to conclusion under the statutory remand/removal system. Case management of such cases commenced under the remand/removal system will be governed to conclusion by Standing Order 1-88 (see Trans. 269, June 8, 1988).

6. What procedures will apply to cases already pending on August 31 *in the courts that were not previously governed by the One Trial System*?

Those cases must proceed to conclusion under the remand/removal statutory system and under District Court Standing Order 1-88.

7. What about the special system for civil jury trials in the Worcester District Court?

Those procedures (set forth in former G.L. c. 218, § 19B) will no longer be available for cases commenced on or after August 31. However, for cases commenced prior to that date, those special procedures will continue to be available and any cases pending on August 31 will proceed to conclusion in accordance with that statute. While the statute was "stricken" by the new One Trial legislation, St. 2004, c. 252, § 7, the new legislation as a whole (including the provision striking the old G.L. c. 218, § 19B) is applicable only to cases commenced on or after August 31: "This act . . . shall apply to civil actions commenced on or after August 31, 2004 . . . ." St. 2004, c. 252, § 23.

Commencing Actions Under the One Trial System; Procedural Amount

8. Is there a monetary limit to the tort and contract cases that can be brought in the District Court under the One Trial System?

No, there is no longer a *jurisdictional* limit on the amount of the claim. This is a major change from the One Trial System in effect up until now. Under a new provision in the One Trial law, G.L. c. 218, § 19, as amended by St. 2004, c. 252, § 5, there is a "procedural amount" that, if exceeded, may be the basis of dismissal.

9. What is the "procedural amount"?

The procedural amount is defined in the same manner as the previous jurisdictional amount: there must be "no reasonable likelihood that the plaintiff will recover an amount in excess of $25,000."

10. Does the procedural amount requirement apply to counterclaims?

Apparently not. The law states that the procedural-amount requirement is based on the amount that is reasonably likely to be recovered *by the plaintiff*. G.L. c. 218, § 19, as amended by St. 2004, c. 252, § 5. Also, the judge in determining whether the procedural-amount requirement has been met must base that decision on the Statement of Damages filed *by the plaintiff*. G.L. c. 218, § 19A(b), as amended by St. 2004, c. 252, §6. The law is silent regarding the amount of damages sought in, or reasonably likely to be recovered by means of, a counterclaim.

11. How does the judge determine if this requirement is satisfied?

The law requires the plaintiff to file a detailed Statement of Damages form (p. 45). This form must be filed with the complaint, summons and filing fee in order for the case to be accepted by the clerk-magistrate. The information on the form will be used to determine if the "no reasonable likelihood" test has been met, if this issue is raised.

12. Does the clerk's office have a role to play in checking the Statement of Damages at the time of commencement?

No. The Statement of Damages must be filed with the complaint, summons and filing fee. The clerk-magistrate must be sure that it is included. If not, the case cannot be accepted for filing. There is no statutory provision that the clerk-magistrate review the *contents* of the Statement of Damages or make any judgment as to the procedural amount.

13. What if the actual claim on the Statement is in excess of $25,000?

No action is required by the clerk-magistrate. See Q&A 13, below. The defendant may wish to raise the issue of "no reasonable likelihood of recovery of amount in excess of $25,000" for the purpose of possible dismissal. If the issue is not addressed, or if it is addressed and the judge chooses not to dismiss, the action will proceed to disposition.

Dismissal for Improper Procedural Amount

14. If the clerk's office has no role to play in reviewing the contents of the Statement of Damages for compliance with the "no reasonable likelihood test," how and when can this issue be raised?

If the defendant concludes that, regardless of the amount of plaintiff's claim, there *is* a reasonable likelihood the plaintiff will recover more than $25,000, the defendant can raise the issue and move for dismissal. Also, the law does not preclude the judge from raising this issue *sua sponte.* See Q&A 18,

below.

15. How and when may the defendant raise this issue?

It would appear that under Mass. R. Civ. P. 12(b), a motion to dismiss because of an improper procedural amount must be set forth in the defendant's answer. (This defense does not appear to be among those that Rule 12 permits to be raised by a separate motion to dismiss.)

16. What if the defendant does not timely raise the issue of the "procedural amount?"

Like any other defense not timely raised (except lack of jurisdiction), it would appear to be waived. The new law expressly provides that even if the procedural-amount test has not been met, the case is within District Court jurisdiction.

17. If the defendant *does* timely raise the issue of procedural amount, how is it decided?

The law provides that there must be a hearing on the issue but provides that if the judge finds a violation of the procedural amount, he or she *may* dismiss the case. This appears to allow the judge to decline to dismiss the case as a matter of discretion.

18. May the judge raise the issue of the procedural amount *sua sponte*?

The law does not expressly authorize the judge to raise this issue, nor does it preclude the judge from doing so. It clearly does not *require* the judge to review the Statement of Damages in every case to ensure that the procedural amount requirement is met. (In fact, in default cases the judge may never see the case file.)

Since the $25,000 threshold amount is now procedural and the District Court has jurisdiction regardless of the amount claimed or likely to be recovered, the judge may decide to take a "passive" approach and let the issue be asserted (or waived) by the defendant in accordance with the applicable rule.

If the judge does raise the issue *sua sponte*, G.L. c. 218, § 19A(b) requires that the parties be allowed to file "written responses" and that a hearing be held if requested by any party. (These requirements are also applicable where the defendant raises this issue in his or her answer under Mass. R. Civ. P. 12[b].)

Appeal of Ruling on Dismissal

19. If the judge orders dismissal, how can the plaintiff appeal?

The law provides for an appeal of such a dismissal to a single justice of the Appeals Court. G.L. c. 218, § 19A(c), as amended by St. 2004, c. 252, § 6. The plaintiff must file a notice of appeal within seven days of being notified of the dismissal. The clerk-magistrate must notify the judge when such a notice of appeal is received. The judge who ordered the dismissal must then provide "written findings

and reasons justifying the dismissal" within three days of receipt of notice of the appeal from the clerk-magistrate. The statute specifies the papers to be sent to the Appeals Court. (A sample "Transmittal of Appeal from Judgment of Dismissal for Want of Procedural Amount" form is reproduced at p. 46.)

20. If the court declines to dismiss (1) because it rules that the procedural amount *has* been met, or (2) as a matter of its discretion even though the procedural amount *has not* been met, how can the defendant appeal this ruling?

There is no provision for immediate appeal of such an interlocutory ruling. (A judge may report it to the Appellate Division as a matter of discretion under G. L. c . 231, § 108, as amended by St. 2004, c. 252, § 15.)

Similarly, it appears that such a ruling cannot be reviewed in the normal course of a postjudgment appeal to the Appellate Division, since "violation of the [monetary amount] requirements for proceeding in the district court . . . shall not be grounds for any post-judgment relief in any case." G.L. c. 218, § 19A(b), as amended by St. 204, c. 252, § 6.

21. What if an action is commenced within the statute of limitations, but dismissed based on improper procedural amount after that statutory time limit has expired?

The new law specifically provides that in such circumstances the plaintiff will have 30 days after the date of the notice of the dismissal within which to recommence the action in Superior Court, notwithstanding the expiration of the statute of limitations. G. L. c.218, § 19A(d), as amended by St. 2004, c. 252, § 6.

Recommencement after Dismissal

22. What if a case is dismissed in Superior Court even though the stated damages are more than $25,000 and the plaintiff then recommences the same case in District Court?

In such an instance the District Court should consider the Superior Court decision on "reasonable likelihood" to be binding regardless of the amount of damages claimed and should proceed with the case.

23. What about the filing fee in a case recommenced in the District Court following a Superior Court dismissal for improper procedural amount?

The new law provides that in such a case no filing fee is required from the plaintiff. G.L. c. 218, § 19A(d), as amended by St. 2004, c. 252, § 6. In such cases District Court clerk-magistrates should require a certified copy of the Superior Court judgment of dismissal.

24. Is there another purpose for requiring a certified copy of the Superior Court judgment of dismissal other than for waiver of the filing fee?

Yes. The certified copy of the Superior Court judgment will alert the court that the case is not

subject to dismissal, even though the amount of the damages claimed is over $25,000. For this reason, it is important for the District Court clerk's office to include the Superior Court judgment of dismissal in the case file.

Civil Jury Trials

25. How does a party claim jury trial?

The law provides that District Court jury trials must be sought by means of a "demand" served on opposing parties. The service and filing of a demand for jury trial are further governed by Mass. R. Civ. P. 38(b). Failure to make a proper demand "shall constitute a waiver by that party of trial by jury." G.L. c. 218, § 19B(a), as amended by St. 2004, c. 252, § 7.

26. Does a jury claim affect normal pretrial procedures?

No. The law provides that:

> "In any case in which a party has filed a timely demand for a jury trial, the action shall not be designated upon the docket as a jury action until after the completion of a pretrial conference, a hearing on the results of such conference and until the disposition of any pretrial discovery motion and compliance with any order of the court pursuant to such motions."

G.L. c. 218, § 19B(a), as amended by St. 2004, c. 252, § 7.

Pretrial procedures in such cases are governed by the Massachusetts Rules of Civil Procedure and by Joint Standing Order 1-04 (reproduced beginning at p. 39). The Standing Order requires case management conferences, and, if necessary, pretrial conferences. See Q&A 39 and 41, below.

27. What about the required "time standards" procedures under Standing Order 1-88?

District Court Standing Order 1-88, which imposes "time standards" requirements on cases governed by the remand and removal system, including dismissal for failure of a plaintiff to claim trial in cases not disposed within one year, *does not apply to actions governed by the One Trial System.* It has been replaced by Joint Standing Order 1-04, which provides detailed procedures for the management of these cases.

28. Where -- and by whom – are civil jury trials conducted?

In the District Court jury trials under the civil One Trial System are to be provided in specific courts designated in each county by the Chief Justice of the District Court. G.L. c. 218, §19B(b), as amended by St. 2004, c. 252, § 7. The Regional Administrative Judges assign judges to these sessions.

In Plymouth, Suffolk and Worcester counties, where the One Trial System is newly effective, jury session locations will be announced shortly, and more information will be provided regarding the transmission of cases to these jury sessions. Given the start-up date and time frames involved, jury trials in civil actions will generally not be required for some time in these three counties. In the meantime,

however, jury trials may be required in summary process cases. Those trials should be scheduled at appropriate times in the existing criminal jury sessions in those counties.

29. Are there any provisions regarding the actual conduct of District Court civil jury trials?

Yes. The law provides that a judge presiding over a District Court civil jury session:

> "shall have and exercise all powers and duties which a justice sitting in the superior court department has and may exercise in the trial and disposition of civil cases including the power to report questions of law to the appeals court."

G.L. c. 218, §19B(c), as amended by St. 2004, c. 252, §7.

Please note that this provision:

- may be read to require District Court judges in these sessions to make findings and rulings in each case in which judgment is entered after a jury-waived trial, in accordance with Mass. R. Civ. P. 52, as is required of Superior Court judges.

- does not authorize District Court judges in these sessions to award costs or attorney's fees under G.L. c. 231, § 6F for wholly frivolous claims. See *Brossi v. Fisher,* 51 Mass. App. Ct. 543, 747 N.E.2d 714 (2001), aff'g 1999 Mass. App. Div. 99 (interpreting the same provision quoted above as it appeared in the previous One Trial law).

The law also provides that:

> "Trials by juries of six shall proceed in accordance with the provisions of law applicable to trials by jury in the Superior Court; provided, however, that the number of peremptory challenges shall be limited to two to each party."

G.L. c. 218, § 19B(c), as amended by St. 2004, c. 252, § 7.

30. Can stenographers be appointed in a civil jury session?

Yes. The law provides that a judge presiding at a District Court civil jury session may appoint a stenographer upon request of a party, provided that the court electronic recording system is not available or not properly functioning. (Presumably this includes pretrial proceedings and jury-waived trials as well as jury trials conducted at such sessions.) G.L. c. 218 § 19B (d), as amended by St. 2004, c. 252, § 7. The law sets out the duties of a stenographer and states that the stenographer must be paid for his or her services and expenses by the Commonwealth and that copies of the resulting transcript must be provided to the parties and paid for by the party who requested the copy. The request for a stenographer to preserve testimony at a trial must be in writing and given to the clerk's office no later than 48 hours before the proceeding. If the electronic recording system is not available or not properly functioning, the clerk-magistrate should notify the Administrative Office as soon as possible.

The law also provides that an audio record of court proceedings recorded by a device under the exclusive control of the court is the official record of the proceedings.

31. How can issues of law arising in civil actions be appealed?

Appeal on issues of law arising in civil actions must be heard by the District Court Appellate Division. G.L. c. 231, § 108, as amended by St. 2004, c. 252, § 15. See also G. L. c. 218, § 19B(c), as amended by St. 2004, c. 252, § 7. Such appeals are governed by the District/Municipal Courts Rules for Appellate Division Appeal. Further appeal is to the Appeals Court. This same section of the law also permits a District Court trial judge to report questions of law directly to the Appellate Division. Another provision of the law permits District Court judges sitting in civil jury sessions to report questions of law to the Appeals Court. C.L. c. 218, § 19B(c), as amended by St. 2004, c. 252, § 7.

For appeals to the Appellate Division, the civil One Trial law requires the filing of a bond payable to the appellee "in such reasonable sum and with such surety or sureties as may be approved by the appellee or by the justice or clerk or assistant clerk" of the trial court. The purpose of the bond is to satisfy any judgment for costs that may be entered against the appellant by the Appellate Division. The appellant may deposit cash in lieu of a bond, in a reasonable amount fixed by the clerk or judge of the trial court "as security for the prosecution of the appeal and the payment of costs." The law also lists those parties exempt from the bond requirement, and makes inapplicable to such bonds the bond approval fee normally required by G.L. c. 262, § 2. G.L. c. 218, § 19B(e), as amended by St. 2004, c. 252, § 7.

32. What is the new provision in the law allowing a party to take an interlocutory appeal to the Appellate Division?

The One Trial law now provides that a party to a money damage action or to a summary process action may appeal the grant or denial of an interlocutory order in response to a request for equitable relief under G.L. c. 218, § 19C . G. L. c. 231, § 118A, as inserted by St. 2004, c. 252, § 16. Thus, such an interlocutory appeal is not available for non-equity orders (such as orders for attachments or orders denying the waiver of a bond requirement). This new interlocutory appeal must be made to a single justice of the Appellate Division and must be filed within ten days of the entry of the order. The single justice "may affirm, modify, vacate, set aside, reverse the order or remand the cause and direct entry of such appropriate order as may be just under the circumstances." Further appeal from the Appellate Division is available to the Appeals Court or the Supreme Judicial Court. The filing of the appeal does not stay the order, but the single justice can order a stay.

Summary Process Actions

33. How do summary process actions proceed under the One Trial law?

Under the civil One Trial law, summary process actions may still be commenced either in District Court, Housing Court, or Superior Court. In District Court summary process actions, however, the law eliminates de novo appeal to Superior Court from the District Court judgment. Thus, a summary process case that is filed in a District Court under the civil One Trial System will be tried to conclusion in that District Court, with a single trial either before a judge or (if there has been a proper jury claim) by a six-person jury. G.L. c. 218, § 19B(a), as amended by St. 2004, c. 252, § 7. Note that procedure in these cases is still governed by Trial Court Rule I, the Uniform Summary Process Rules.

It is important to note that under the civil One Trial law District Court summary process actions (unlike civil money damage actions) have no "procedural amount" regarding damages claimed or likely to be recovered. Under the civil One Trial System, the District Court may proceed with summary process actions regardless of the amount of damages sought.

In District Court summary process actions under the One Trial System, appeal on issues of law is available to the Appellate Division, in accordance with the District/Municipal Courts Rules for Appellate Division Appeal, with further appeal to the Appeals Court. G.L. c. 239, §§ 3 and 5, as amended by St. 2004, c. 252, §§ 18 and 19. This is a change from the traditional rule under which the Appellate Division had no jurisdiction over summary process matters. *Gloucester Bank & Trust Co. v. Ferrara*, 1998 Mass. App. Div. 18.

General Laws c. 239, § 5, as amended by St. 2004, c. 252, § 19, provides requirements for bonds to be filed when appeal is claimed to the Appellate Division. This includes a bond for costs to be filed by any party who appeals and a bond for damages to be filed by a defendant. The statute also provides procedures for waiver of the damage bond and for installment payments by the defendant during the appeal.

34. Where are jury trials provided in summary process cases?

Jury trials are provided at the district courts designated to have civil jury sessions by the Chief Justice. G.L. c. 218, § 19B(b), as amended by St. 2004, c. 252, § 7.

35. How must a party claim a jury trial in a summary process case?

The civil One Trial law states that any party seeking a jury trial in a summary process case must do so by serving on the other parties a "demand therefore in writing after the commencement of the action" and that failure to do so "shall constitute a waiver by that party of trial by jury" G.L. c. 218, § 19B(a), as amended by St. 2004, c. 252, § 7. The jury demand may either be endorsed upon a pleading, or separately filed and served. See Trial Court Rule I, Uniform Summary Process Rule 8.

Case Management under Joint Standing Order 1-04

36. What is the purpose of Joint Standing Order 1-04?

While the civil One Trial statute provides the basic elements of the new system, just as important are the detailed procedures in BMC & District Court Joint Standing Order 1-04 for managing the prompt and orderly disposition of civil money damage cases as they move through the One Trial System. This Standing Order requires the clerk's office to institute some new systems to ensure its proper implementation.

37. To what cases does Joint Standing Order 1-04 apply?

Joint Standing Order 1-04 applies to all civil money damages cases commenced on and after August 31, 2004. It supercedes previous Standing Order 1-98.

For cases governed by the One Trial System that were commenced before that date, the Standing Order applies to "any procedure occurring on or after" August 31, 2004.

Cases governed by the remand/removal system that are pending on August 31, 2004 will continue to be governed to conclusion by Standing Order 1-88, except that two provisions of Standing Order 1-04 will apply going forward: Section VI (motion practice) and Section VII (continuances).

38. Are there any "automatic" dismissal procedures in Joint Standing Order 1-04?

Yes. There are two "automatic" dismissal procedures in Joint Standing Order 1-04 (they are unchanged from Standing Order 1-98):

- ***Dismissal for lack of service.*** Joint Standing Order 1-04, § V.A., requires the clerk's office to utilize Mass. R. Civ. P. 4(j) to automatically dismiss any case in which the plaintiff has failed to serve the summons and complaint on the defendant with 90 days after filing the complaint. This requires each clerk-magistrate to implement a system so that: (1) complaints where no proof of service has been filed for 90 days after case filing are promptly identified on an ongoing basis; (2) a Rule 4(j) judgment of dismissal is promptly docketed in such cases; and (3) a Notice of Entry of Judgment of Dismissal is promptly sent to the parties.

  To implement this procedure, clerk's office personnel must check each case file 120 days after filing in every case in which an answer has not been filed to see if there is a return of service in the file at that time. (The 120 days allows for the 90-day period for service, plus the 20-day period for filing the return of service, plus a three-day period to allow for filing of the return by mail, plus a seven-day "cushion.")

- ***Dismissal nisi for failure to act on default.*** Joint Standing Order 1-04, § V.B. is the other "automatic" dismissal provision. Its purpose is to dismiss any case in which a default judgment would be appropriate, but the plaintiff has taken no action for eight months to obtain it. It requires the automatic entry of a conditional Order for dismissal in any case where no answer or defensive motion has been filed for eight months after the case was filed. The case is subsequently to be dismissed unless the plaintiff acts to obtain a default judgment or to request non-dismissal, within 30 days after the conditional Order.

  This procedure requires the clerk-magistrate to establish a system to: (1) identify these non-answer cases at the end of eight months, (2) promptly docket and send a conditional Order for dismissal, and (2) promptly docket and send a Judgment of Dismissal and a Notice of Entry of Judgment of Dismissal thirty days later, when appropriate. A sample "Order Nisi for Dismissal for Failure to Act on Default" form is reproduced at p. 47, and a sample "Notice of Entry of Judgment of Dismissal for Failure to Act on Default" form is reproduced at p. 48.

Note that cases under the civil One Trial System are not governed by Standing Order 1-88, so there is no need to track these cases for a possible automatic "1-88 Time Standards dismissal" at the end of one year from filing.

39. Why is a case management conference required?

In every civil action for money damages that is subject to the civil One Trial System, once an answer is filed by any defendant, the clerk's office must schedule and send notice of a case management conference to be held *within four months* after the answer was filed. Joint Standing Order 1-04, § III.A. This requires each clerk-magistrate to create a system to ensure that the proper notice is sent out promptly as soon as an answer is filed. A sample "Notice of Case Management Conference" form is reproduced at p. 49.

The case management conference may be conducted by a judge, or by a clerk-magistrate or assistant clerk-magistrate who has been designated by the Chief Justice (§ III.C). Its purpose is *early intervention,* and its specific goals are set out in § III.B:

- ***Settlement:*** to discuss settlement progress and opportunities for settlement, and offer and conduct early intervention alternative dispute resolution;

- ***Case management orders:*** to consider case management orders proposed by any party, or by the court, regarding limitation or sequencing of discovery events, disclosure or limitation of expert witnesses, motion briefing, and other matters that would reduce expense and delay of litigation, and to enter appropriate orders;

- ***Default or dismissal:*** to enter judgment for relief or dismissal, and schedule hearing for assessment of damages if necessary;

- ***Trial-readiness:*** to assess the trial-readiness of cases; and

- ***Firm date for trial or pretrial conference:*** to assign a firm date for trial in cases that are ready for trial, and a firm date for pretrial conference for all cases which are not yet ready for trial.

40. Are there any new provisions in Joint Standing Order 1-04 regarding case management conferences that were not contained in its predecessor, Standing Order 1-98?

Yes. There are two new provisions.

- The first, in § III B, requires that the person who conducted the conference must prepare a case management conference report summarizing the results of the conference. A sample "Case Management Conference Report" form is reproduced at p. 50.

- The second new provision involves "mandatory early disclosure" and is set forth in § III D. The provision provides the *option* to a judge conducting a case management conference to issue an order to the parties to provide discovery of specific items and information to each other. Under such order, the disclosure is to be completed no later than 90 days after completion of the conference. In the District Court this option should not be used routinely (particularly in those courts in which discovery has not been a problem).

41. Is a pretrial conference required?

If a case is not disposed or assigned a trial date at the case management conference, then during the case management conference a firm date must be set for a pretrial conference. Joint Standing Order 1-04, § III.B. The Order also requires that a Notice of Pretrial Conference be completed immediately and given to the parties before they leave the case management conference. A sample "Notice of Pretrial Conference" form is reproduced at p. 51.

The pretrial conference must be scheduled for a date *not later than the end of the tenth month after the month in which the case was filed,* or any other date the court may order for good cause. (§ IV.A.) (For example, a case filed anytime during the month of January must be scheduled for a pretrial conference no later than the end of November.) Keep in mind that this provision establishes a *maximum* date for pretrial conferences. Generally, such conferences should be scheduled well within that maximum.

In advance of the pretrial conference:

- The parties must prepare and file a joint Pretrial Memorandum for use at the conference (§ IV.A);

- Discovery and pretrial motions must be filed, marked and heard before the pretrial conference, unless the court orders otherwise (§ II); and

- Counsel must complete preparation of his or her case by the date of the pretrial conference, unless the court orders otherwise (§ II).

The pretrial conference must be conducted by a judge or, if a judge is unavailable, by a clerk-magistrate or assistant clerk-magistrate who has been designated by the Chief Justice. Pretrial conferences may also be conducted by alternative dispute resolution personnel approved by the court. (§ VI. C.) This latter provision is somewhat different from that previously set forth in Standing Order 1-98.

The purpose of the pretrial conference is settlement of the case or, for cases which do not settle, assignment of a firm trial date after consultation with counsel. If a trial date is required, notice of such date must be given to all parties at the pretrial conference. At the conclusion of the pretrial conference, the person conducting the pretrial conference must prepare a Pretrial Conference Report (§ IV.B). A sample "Pretrial Conference Report" form is reproduced at p. 52.

42. Is a Trial Order required after a pretrial conference?

Yes. When it is determined at the pretrial conference that a trial is required, the court must issue a Trial Order requiring the parties to prepare for trial (§ IV.B). If the pretrial conference was conducted by a judge (or a judge is immediately available), it is good practice to immediately complete and distribute a Trial Order to the parties before the conclusion of the pretrial conference. Otherwise, a Trial Order should be authorized by a judge and sent to the parties promptly after the pretrial conference. A sample "Trial Order" form is reproduced at pp. 53-54.

43. Is there a way for motions to be decided without the attorneys having to be present?

Yes. There are two such provisions. The first, in § VI.C., provides an "opposition procedure" modeled on that used in the Superior Court. Where all parties are represented by counsel, it permits most motions to be disposed without hearing if the moving party properly invokes the opposition procedure, and no other party files an "opposition to motion" at least five days before the scheduled hearing date. The court must then decide the motion and notify the parties within 14 days after the scheduled date. Certain motions are exempted from the opposition procedure, including motions for continuance. This provision is unchanged from Standing Order 1-98.

The second "non-appearance" provision is new in Joint Standing Order 1-04. It appears in § VI. B, "Agreed Upon Motions." It permits a joint motion, or a motion where the moving party avers that all other parties agree with the outcome that the motion seeks, to submit the motion for a ruling "on the papers." This procedure is available only in cases where all parties are represented by counsel.

44. Are there any special provisions in Joint Standing Order 1-04 for discovery materials?

Yes. Joint Standing Order 1-04, § VI. C. requires that discovery motions must include copies of the discovery requests and responses which are the subject of the motion. It also requires that summary judgment motions that rely on any pleading or discovery must include copies of such pleadings or discovery. Noncomplying motions may be denied without prejudice.

The provision regarding the non-filing of discovery materials that previously appeared in Standing Order 1-98 has been dropped from Joint Standing Order 1-04. Massachusetts R. Civ. P. 5, as amended in 2002, addresses this subject.

45. What are the requirements for continuances?

Joint Standing Order 1-04, § VII provides several specific provisions regarding continuances, including the following:

- Counsel and pro se litigants are excused from attending a scheduled event only if they have been notified by the court that it has been continued.

- All continuances must be requested by written motion, accompanied by an affidavit of counsel, and include a list of any days within the following 30 days that counsel is unavailable for the event to be continued. Counsel must send a copy of any continuance request to the client.

- Clerk-Magistrates and designated assistant clerk-magistrates may allow a joint request to continue a case management conference or pretrial conference, but only once and for not more than 30 days. All other continuances may be granted only by a judge. A trial date may be continued only by a judge assigned to the civil trial session (or in case of absence or unavailability, by the First Justice or a judge designated by him or her).

- All continuances must be to a date and event certain. No action may be "continued generally."

St. 2004, c. 252
(effective August 31, 2004)

AN ACT ESTABLISHING A ONE TRIAL SYSTEM FOR CIVIL CASES

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Deletes reference to remand/removal system

SECTION 1. Paragraph 3A of section 9 of chapter 93A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the last sentence.

Money damages actions to proceed in Superior Court only if any recovery likely to be over $25,000

SECTION 2. Section 3 of chapter 212 of the General Laws, as so appearing, is hereby amended by adding the following 2 sentences:- Except as otherwise provided by law, the court shall have original jurisdiction of civil actions for money damages. The actions may proceed in the court only if there is no reasonable likelihood that recovery by the plaintiff will be less than or equal to $25,000, or an amount ordered from time to time by the supreme judicial court. Where multiple damages are allowed by law, the amount of single damages claimed shall control.

G.L. c. 212, § 3A

Superior Court clerk not to accept civil filings without Statement of Damages

SECTION 3. Said chapter 212 is hereby further amended by inserting after section 3 the following section:-

Section 3A. (a) A clerk-magistrate in the superior court shall not accept for filing a complaint or other pleading which commences a civil action for money damages, except as otherwise provided by law, unless it is accompanied by a statement signed by the attorney or pro se party. The statement shall specify the facts on which the plaintiff then relies to determine money damages. The defendant may file with his answer a statement specifying the potential damages which may result if the plaintiff prevails.

Dismissal by Superior Court judge if any recovery not likely to be over $25,000

(b) If it appears to the court, from the statement of damages by the plaintiff that there is no reasonable likelihood that the estimated damages will be consistent with the civil money damage limits of the court, as set forth in section 3, the judge, after receiving written responses from the parties and after a hearing, if requested by any party, may dismiss the case without prejudice for failure to comply with the requirements of said section 3 regarding the amount necessary for proceeding in the superior court. The filing fee in the dismissed actions shall be retained by the court; but the recommencement of the same action in the district court or Boston municipal court departments of the trial court shall not require the payment of a filing fee. If a civil action is dismissed in the district court or Boston municipal court departments pursuant to section 19A of chapter 218, and the action is recommenced in the superior court, the filing fee shall be reduced by the amount of the filing fee previously paid to attempt to commence

- *Effect on filing fee*

the same action in the district court or Boston municipal court. The procedure provided herein for dismissal of an action for violation of the requirements regarding the amount necessary to proceed in the superior court under section 3 shall be the exclusive method by which the dismissal may be ordered. Violation of the requirements for proceeding in the superior court shall not deprive the court of jurisdiction and shall not be grounds for any post-judgment relief in any case.

- *$25,000 procedural amount is non-jurisdictional*

(c) In any case where the superior court dismisses the case as provided in this section, the plaintiff may take an appeal as hereinafter provided. The appeal shall be to a single justice of the appeals court at the next sitting thereof. Upon being notified of the dismissal, the plaintiff shall have 7 days thereafter to file a notice of appeal with the clerk of the dismissing court. Upon receipt of notice of appeal timely filed, the clerk shall forthwith notify the judge who approved the dismissal. Within 3 days of receipt of the notice, the judge who approved the dismissal shall set forth written findings and reasons justifying the dismissal, which findings and rulings shall be part of the record on appeal. The clerk shall forward the pleading which commenced the civil action, all statements by the parties, specifying in detail the potential damages if the plaintiff prevails, the judge's written findings and reasons justifying the dismissal and any other documents on file relevant to the appeal to the clerk of the appeals court. Upon receipt thereof, the clerk of the appeals court shall set the matter down for a speedy hearing and send notice to the parties. The court dismissing the case may, with or without motion, issue an order or process to preserve the rights of the parties pending the appeal. The single justice of the appeals court may enter or revoke that order or process. The decision of the single justice of the appeals court as to the dismissal shall be final.

- *Superior Court dismissal appealable to Appeals Court single justice within 7 days of notice*

(d) Notwithstanding chapter 260 or any other applicable statutes of limitation, in a civil action under this section in which a plaintiff's case has been dismissed as provided in this section, the plaintiff shall be given 30 days after the date of receipt of the notice of dismissal or, in the case of an appeal from the dismissal, 30 days after the date of receipt of the notice of the decision of the single justice of the appeals court to file the case in the appropriate court; if, the commencement of the dismissed case was within the applicable statute of limitations. The 30-day time limit in this section for recommencement of an action following dismissal of the action shall apply only when the time permitted under the applicable statute of limitations would have expired at any time from the original commencement of the action to the end of the 30-day period.

- *Statute of limitations extended 30 days to refile dismissed case in District Court*

Deletes reference to remand/removal system

SECTION 4. Section 12 of said chapter 212, as appearing in the 2002 Official Edition, is hereby amended by striking out, in lines 1 and 2, the words "or proceeding from a judgment of a district court" and inserting in place thereof the following words:- authorized by law.

Except in summary process actions, money damages actions to proceed in District

SECTION 5. Section 19 of chapter 218 of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 4 sentences:- Except as otherwise provided by law, the district

Court only if any recovery likely to be $25,000 or less

court and Boston municipal court departments shall have original jurisdiction of civil actions for money damages. The actions may proceed in the courts only if there is no reasonable likelihood that recovery by the plaintiff will exceed $25,000, or an amount ordered from time to time by the supreme judicial court. Where multiple damages are allowed by law, the amount of single damages claimed shall control. Notwithstanding the limitation of $25,000, or other amount ordered by the supreme judicial court, the district courts may proceed with actions for money damages in any amount in summary process actions.

G.L. c. 218, § 19A

SECTION 6. Said chapter 218 is hereby further amended by striking out section 19A, as so appearing, and inserting in place thereof the following section:-

District Court clerk not to accept civil filings without Statement of Damages

Section 19A. (a) A clerk-magistrate in a district court or in the Boston municipal court shall not accept for filing any complaint or other pleading which commences a civil action for money damages, except as otherwise provided by law, unless it is accompanied by a statement signed by the attorney or pro se party. The statement shall specify the facts on which the plaintiff then relies to determine money damages. The defendant may file with his answer a statement specifying the potential damages which may result if the plaintiff prevails.

Dismissal by District Court judge if any recovery likely to be over $25,000

(b) If it appears to the court from the statement of damages by the plaintiff that there is no reasonable likelihood that the estimated damages will be consistent with the civil money damage limits of the court, as set forth in section 19, the judge, after receiving written responses from the parties and after a hearing, if requested by any party, may dismiss the case without prejudice for failure to comply with the requirements of said section 19 regarding the amount necessary for proceeding in the district court or Boston municipal court departments. The filing fee in the dismissed actions shall be retained by the court. If a civil action is dismissed in the superior court pursuant to section 3A of chapter 212, and the action is recommenced in the district court or Boston municipal court, those courts shall not require the payment of a new filing fee. If an action commenced in the district court or Boston municipal court departments is dismissed as provided herein and is recommenced in the superior court, the filing fee shall be reduced by the amount of the filing fee previously paid to attempt to commence the same action in the district court or the Boston municipal court. The procedures provided herein for dismissal of an action for violation of the requirements regarding the amount necessary to proceed in the district court or Boston municipal court departments under section 19 shall be the exclusive method by which the dismissal may be ordered. Violation of the requirements for proceeding in the district court or Boston municipal court departments shall not deprive the court of jurisdiction and shall not be grounds for any post-judgment relief in any case.

- *Effect on filing fee*

- *$25,000 procedural amount is non-jurisdictional*

- *District Court dismissal appealable to Appeals Court single justice within 7 days of notice*

(c) In any case where a district court or the Boston municipal court dismisses the case as provided in this section, the plaintiff may take an appeal as hereinafter provided. The appeal shall be to a single justice of the appeals court at the next sitting thereof. Upon being notified of the dismissal, the plaintiff shall have 7 days thereafter to file a notice of appeal with the clerk of the dismissing court.

Upon receipt of notice of appeal timely filed, the clerk shall forthwith notify the judge who ordered the dismissal. Within 3 days of receipt of the notice, the judge who ordered the dismissal shall set forth written findings and reasons justifying the dismissal, which findings and rulings shall be part of the record on appeal. The clerk shall forward the pleading which commenced the civil action, all statements by the parties, specifying in detail the potential damages if the plaintiff prevails, the judge's written findings and reasons justifying the dismissal and any other documents on file relevant to the appeal to the clerk of the appeals court. Upon receipt thereof, the clerk of the appeals court shall set the matter down for a speedy hearing and send notice to the parties. The court dismissing the case may, with or without motion, issue an order or process to preserve the rights of the parties pending the appeal. The single justice of the appeals court may enter or revoke that order or process. The decision of the single justice of the appeals court as to the dismissal shall be final.

• *Statute of limitations extended 30 days to refile dismissed case in Superior Court*

(d) Notwithstanding chapter 260 or any other applicable statutes of limitation, in a civil action under this section in which a plaintiff's case has been dismissed as provided in this section, the plaintiff shall be given 30 days after the date of receipt of the notice of dismissal or, in the case of an appeal from the dismissal, 30 days after the date of receipt of notice of the decision of the single justice of the appeals court to file the case in the appropriate court; if the commencement of the dismissed case was within the applicable statute of limitations. The 30-day time limit in this section shall apply only when the time permitted under the applicable statute of limitations would have expired at any time from the original commencement of the action to the end of the 30-day period.

G.L. c. 218, § 19B

SECTION 7. Said chapter 218 is hereby further amended by striking out section 19B, as so appearing, and inserting in place thereof the following section:-

One trial in District Court

Section 19B. (a) Except as otherwise provided by law, all civil actions for money damages, or summary process actions, filed in a district court or the Boston municipal court shall be subject to 1 trial, with or without a jury of 6, in the district court department or in the Boston municipal court department.

Demand for jury trial; waiver of jury trial

Any party may demand a trial by jury of 6 of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing after the commencement of the action. The demand may be endorsed upon a pleading of the demanding party. The failure of a party to serve and file a demand for jury trial shall constitute a waiver by that party of trial by jury. In any case in which a party has filed a timely demand for a jury trial, the action shall not be designated upon the docket as a jury action until after the completion of a pretrial conference, a hearing on the results of the conference and until the disposition of any pretrial discovery motion and compliance with any order of the court pursuant to the motions.

Jury sessions

(b) The district court and Boston municipal court departments may hold jury of 6 sessions for the purpose of conducting jury trials of summary process cases and of civil actions for money damages proceeding in those courts pursuant to the provisions of section 19. The chief justice for the district court department shall

designate at least 1 district court in each county for the purpose of conducting jury trials; but, with the approval of the chief justice for the superior court department, facilities of the superior court may be designated by the chief justice for administration and management of the trial court for the conduct of jury trials in cases commenced in the district courts or in the Boston municipal court. If necessary, facilities of any department of the trial court may be designated by the chief justice for administration and management for trial by jury of civil cases from the district court or the Boston municipal court. The chief justice for the district court department may also designate 1 or more district courts in any county for the purpose of conducting jury waived trials of cases commenced in any district court of the county consistent with the requirements of the proper administration of justice. Persons in district courts who waive their right to jury trial shall be provided a jury waived trial in the same district court if the jury waived trial session has been established in the court. If the jury waived trial session has not been so established, the parties shall be provided a jury waived trial in a court as hereinbefore designated. Parties in the district courts who claim a jury trial shall be provided a jury trial in a jury of 6 session in the same court if a jury of 6 session has been established in that court. If a jury of 6 session has not been so established, the parties shall be provided jury trials in a jury of 6 session as hereinbefore designated. In cases where the parties claim a jury trial, the clerk shall, subject to subsection (a), forthwith transfer the case for trial in the appropriate jury session. The transfer shall be governed by procedures to be established by the chief justices of the district court and Boston municipal court departments.

Jury-waived sessions

Powers of judges in District Court jury sessions

(c) The justice presiding over a jury of 6 session shall have and exercise all powers and duties which a justice sitting in the superior court department has and may exercise in the trial and disposition of civil cases including the power to report questions of law to the appeals court. Trials by juries of 6 shall proceed in accordance with the law applicable to trials by jury in the superior court; but the number of peremptory challenges shall be limited to 2 to each party. Jurors shall be provided for the jury of 6 session by the office of the jury commissioner in accordance with chapter 234A. If necessary, the superior court shall make available jurors from the pool of jurors for the jury sessions in either civil or criminal sessions in the superior court. The chief justices of the district court and Boston municipal court departments shall arrange for the sittings of the jury sessions and shall assign justices thereto, so that speedy trials may be provided. Review may be had by the appropriate appellate division pursuant to section 108 of chapter 231, and thereafter by the appeals court.

- *2 peremptory challenges for each party*

- *Appeal to Appellate Division*

(d) The justice presiding at the jury of 6 session may, upon the request of a party, appoint a stenographer; provided, however, that where the party claims indigency, the appointment is determined to be reasonably necessary in accordance with chapter 261; and provided, further, that the court electronic recording system is not available or not properly functioning. The stenographer shall be sworn, shall take stenographic notes of all the testimony given at the trial and shall provide the parties thereto with a transcript of the notes or any part thereof taken at the trial or hearing for which the stenographer shall be paid by

- *Stenographers*

the party requesting it at the rates fixed by the chief justices for the district court or Boston municipal court departments; but the rate shall not exceed the rate provided by section 88 of chapter 221. The chief justices may make regulations consistent with law relative to the assignments, duties and services of stenographers appointed for sessions in their respective departments and any other matter relative to stenographers. The compensation and expenses of the appointed stenographers shall be paid by the commonwealth. The request for the appointment of a stenographer to preserve the testimony at a trial shall be given to the clerk of the court by a party, in writing, no later than 48 hours before the proceeding for which the stenographer has been requested. The party may file with such request an affidavit of indigency and request for payment by the commonwealth of the cost of the transcript and the court shall hold a hearing on the request before appointing a stenographer in those cases where the party will be unable to pay the cost. The hearing shall be governed by chapter 261 and the cost of the transcript shall be considered an extra cost as provided therein. If the court is unable, for any reason, to provide a stenographer, the proceedings may be recorded by electronic means. The original recording of proceedings in a district court or in the Boston municipal court made with a recording device under the exclusive control of the court shall be the official record of the proceedings. The record or a copy of all or a part thereof, certified by the appropriate chief justice or his designee, to be an accurate electronic reproduction of the record or part thereof, or a typewritten transcript of all or a part of the record or copy thereof, certified to be accurate by the court or by the preparer of the transcript, or stipulated to by the parties, shall be admissible in any court as evidence of testimony given whenever proof of the testimony is otherwise competent. A party may request payment by the commonwealth of the cost of the transcript subject to the same provisions regarding a transcript of a stenographer as hereinbefore provided.

- *Appeal bond for Appellate Division appeal*

(e) Any party who files in a district court or in the Boston municipal court an appeal to the appellate division, in a civil action subject to this section, within 10 days of the entry of judgment or within the further time as the justice orders for cause shown allows, shall also file a bond executed by the party or attorney of record on such party's behalf, payable to the appellee in a reasonable sum and with surety or sureties approved by the appellee or by the justice or clerk or assistant clerk of the district court or Boston municipal court, conditioned to satisfy any judgment for costs which may be entered against the appellant upon the appeal. Any party, in lieu of filing the bond required for an appeal to the appellate division, may deposit with the clerk, within the time required for filing a bond, a reasonable amount to be fixed by the clerk or justice, as security for the prosecution of the appeal and the payment of costs. A certificate of the deposit shall be issued to the depositor by the clerk of the court who shall hold the deposit until the final disposition of the case when the clerk shall apply the deposit to the satisfaction of any costs awarded against the depositor and pay the balance, if any, to the depositor or the depositor's legal representative. A bond or deposit shall not be required of the commonwealth or any officer or employee thereof represented by the attorney general, or of a county, city, town or other

municipal corporation, or of a board, officer or employee thereof represented by the city solicitor, town counsel or other officer having similar duties, or of a political subdivision, or of a party who has given bond according to law to dissolve an attachment or of a defendant in an action of tort arising out of the ownership, operation, maintenance, control or use of a motor vehicle or trailer as defined in section 1 of chapter 90 if the payment of any judgment for costs which may be entered against him is secured, in whole or in part, by a motor vehicle liability bond or policy or a deposit as provided in section 34D of said chapter 90 and the court may, in any case, for cause shown, after notice to adverse parties, order that no bond be given.

District Court equity powers & declaratory judgments

SECTION 8. Section 19C of said chapter 218, as so appearing, is hereby amended by inserting before the first paragraph the following paragraph:-

The district court and Boston municipal court departments of the trial court shall have the same equitable powers and jurisdiction as is provided for the superior court pursuant to chapter 214 and the same authority with regard to declaratory judgments as is provided for the superior court pursuant to chapter 231A for the purpose of the hearing and disposition of summary process actions and of civil actions for money damages under section 19 of this chapter.

BMC civil jurisdiction

SECTION 9. Section 54 of said chapter 218, as so appearing, is hereby amended by striking out, in line 3, the words “all civil actions in which money damages are sought” and inserting in place thereof the following words:- civil actions in which money damages are sought pursuant to sections 19 and 21.

Deletes reference to remand/removal system

SECTION 10. Section 10 of chapter 223 of the General Laws, as so appearing, is hereby amended by striking out, in lines 4 and 5, the words “, or if the action is commenced in a district court and removed to the superior court, within 30 days after such removal”.

Deletes reference to remand/removal system

SECTION 11. Section 19 of chapter 224 of the General Laws, as so appearing, is hereby amended by striking out, in lines 32 and 33, the words “in the same manner as from a judgment of a district court in civil actions”.

Deletes reference to remand/removal system

SECTION 12. Section 59A of chapter 231 of the General Laws, as so appearing, is hereby amended by striking out, in lines 3 and 4, the words “an action has been removed by the defendant from a district court and”.

Appeal to Superior Court eliminated in money damage and summary process actions

SECTION 13. Said chapter 231 is hereby further amended by striking out section 97, as so appearing, and inserting in place thereof the following section:-

Section 97. Unless a written waiver of the right of appeal has been filed by all the parties, a party aggrieved by the judgment of a district court in a civil action may appeal therefrom to the superior court within 6 days after the entry thereof. In that case no execution shall be issued on the judgment appealed from. The case shall be entered in the superior court pursuant to section 101 and shall there be tried and determined as if originally entered therein. This section shall not apply

to civil actions for money damages and to summary process actions brought in the district court and Boston municipal court departments pursuant to section 19 of chapter 218 and chapter 239.

Makes G.L. c.231 § 98 inapplicable to District Court money damages cases

SECTION 14. Section 98 of said chapter 231, as so appearing, is hereby amended by inserting after the word “thirty-nine”, in line 4, the following words:- , or a civil action for money damages in the district court and Boston municipal court departments pursuant to section 19 of chapter 218.

Appellate Division

SECTION 15. Said chapter 231 is hereby further amended by striking out section 108, as so appearing, and inserting in place thereof the following section:-

Section 108. There shall be an appellate division of each district court for the rehearing of matters of law arising in civil cases, in claims of compensation of victims of violent crimes, and in civil motor vehicle infractions. The division of the Boston municipal court shall consist of 3 justices to be designated from time to time by the chief justice therefor. The appellate division of each other municipal court shall be holden by justices for the other divisions of the Boston municipal court department, included in the jurisdiction of the central division, East Boston court, Charlestown court, Brighton court, Dorchester court, Roxbury court, South Boston court, West Roxbury court, which shall be known as the appellate division of the Boston municipal court department. The appellate division of each other district court shall be holden by justices for those other district courts, not exceeding 3 in number out of 5 justices assigned to the performance of appellate duty by the chief justice for the district courts, subject to the approval of the chief justice of the supreme judicial court, as follows: The chief justice for the district courts shall assign 5 justices of districts within the counties of Essex and Middlesex and that part of Suffolk included in the jurisdiction of the district court of Chelsea to act in the appellate divisions of the district courts within those counties and that part of Suffolk county, which shall be known as the northern appellate division district; shall assign 5 justices of the district courts within the counties of Norfolk, Plymouth, Barnstable, Bristol, Dukes and Nantucket to act in the appellate divisions of the district courts within those counties, which shall be known as the southern appellate division district; and shall assign 5 justices of district courts within the counties of Worcester, Franklin, Hampshire, Hampden and Berkshire to act in the appellate divisions of district courts within those counties, which shall be known as the western appellate division district. The assignment may be made for the period of time as the chief justice considers advisable. In each of the foregoing 3 districts, 1 of the justices so assigned shall be designated by the chief justice for the district courts, subject to the approval of the chief justice of the supreme judicial court, as presiding justice, who shall from time to time designate those of the appellate justices who shall act on appeals in each district court in that district and direct the times and places of sittings. The presiding justice of any appellate division may call upon a justice of any other appellate division to serve in his division,

• *Appellate Division single justice sittings*

and when so requested that justice shall serve therein. Two justices shall constitute a quorum to decide all matters in an appellate division; but each appellate division justice may sit as a single justice of the appellate division for the purpose of hearing and deciding appeals of interlocutory orders, as provided in section 118A of chapter 231.

A justice acting in the appellate division of a district court shall be allowed, in addition to his salary and necessary traveling expenses, incidental expenses and clerical assistance while so acting, which shall be paid by the commonwealth.

Any party to a cause brought in the municipal court of the city of Boston, or in any district court, aggrieved by any ruling on a matter of law by a trial court justice, may as of right, appeal the ruling for determination by the appellate division pursuant to the applicable rules of court. The justice whose ruling is appealed shall not sit upon the review thereof. If the appellate division shall decide that there has been prejudicial error in the ruling complained of, it may reverse, vacate or modify the same or order a new trial in whole or part; otherwise it shall dismiss appeal and may impose double costs in the action if it finds the objection to such ruling to be frivolous or intended for delay. If the party claiming the appeal shall not duly prosecute the same, by preparing the necessary papers or otherwise, the appellate division may order the cause to proceed as though no appeal had been filed and may in like manner impose costs. A trial court justice may, after decision thereon, report for determination by the appellate division any case in which there is an agreed statement of facts or a finding of the facts or any other case involving questions of law only. If a trial justice is of opinion that an interlocutory finding or order made by him ought to be reviewed by the appellate division before any further proceedings in the trial court, he may report the case for that purpose and stay all further proceedings except as necessary to preserve the rights of the parties. The municipal court of the city of Boston shall make rules regulating the procedure and sittings of the appellate division of the court, for appeal thereto, for the preparation and submission of reports and allowance of reports which a trial court justice shall disallow as not conformable to the facts or shall fail to allow by reason of physical or mental disability, death or resignation, for the reporting of cases reserved for report when a trial court justice shall fail to report the same by reason of physical or mental disability, death, resignation, removal or retirement, and for the granting of new trials.

G.L. c. 231, § 118A

SECTION 16. Said chapter 231 is hereby further amended by inserting after section 118, as so appearing, the following section:-

Interlocutory appeal of equitable order to Appellate Division single justice

Section 118A. A party aggrieved by an interlocutory order of a trial court justice in the district court department or the Boston municipal court department issued pursuant to section 19C of chapter 218 in response to a request for equitable relief may file within 10 days of the entry of the order, a petition in the appropriate appellate division seeking relief from the order. A single justice of the appellate division may affirm, modify, vacate, set aside, reverse the order or remand the cause and direct the entry of such appropriate order as may be just under the circumstances. A party aggrieved by an interlocutory order of a single

• *Appellate Division*

single justice's grant of interlocutory relief from ruling on equitable order appealable to Appeals Court

justice of an appellate division granting a petition for relief from the order, may appeal therefrom to the appeals court or, subject to section 10 of chapter 211A, to the supreme judicial court, which shall affirm, modify, vacate, set aside, reverse the order or remand the cause and direct the entry of the appropriate order as may be just under the circumstances.

The filing of a petition hereunder shall not suspend the execution of the order which is the subject of the petition, except as otherwise ordered by a single justice of the appellate division.

Summary process

SECTION 17. Chapter 239 of the General Laws is hereby amended by striking out section 2, as so appearing, and inserting in place thereof the following section:-

- *Superior Court summary process jurisdiction only if any recovery likely to be over $25,000*
- *District Court summary process jurisdiction regardless of likely amount of recovery*

Section 2. Such person may bring an action in the superior court in the county in which the land lies if the plaintiff seeks money damages and there is no reasonable likelihood that recovery by the plaintiff will be less than or equal to $25,000, or such other amount as is ordered from time to time by the supreme judicial court. Where multiple damages are allowed by law, the amount of single damages claimed shall control. Such person may bring an action in the district court in the judicial district in which the land lies.

Such person may bring the action by a writ in the form of an original summons to the defendant to answer to the claim of the plaintiff that the defendant is in possession of the land or tenements in question, describing them, which he holds unlawfully against the right of the plaintiff, and, if rent and use and occupation is claimed, that the defendant owed rent and use and occupation in the amount stated; but, subject to the approval of the supreme judicial court, the judge of the housing court of the city of Boston shall determine the form of the writ in the actions brought in his court. Failure to claim rent and use and occupation in the action shall not bar a subsequent action therefor.

District Court summary process cases appealable to Appellate Division

SECTION 18. Section 3 of said chapter 239, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

In case of appeal from the district court on either or both issues involved or on any counterclaim, the appeal shall be to the appellate division under section 5.

Summary process appeals

SECTION 19. Said chapter 239 is hereby further amended by striking out section 5, as so appearing, and inserting in place thereof the following section:-

- *Within 10 days of judgment*
- *Appeal bond*

Section 5. (a) If either party appeals from a judgment of the superior court, a housing court, or a district court in an action under this chapter, including a judgment on a counterclaim, that party shall file a notice of appeal with the court within 10 days after the entry of the judgment. An execution upon a judgment rendered pursuant to section 3 shall not issue until the expiration of 10 days after the entry of the judgment.

(b) In an appeal of a judgment of a district court, other than an appeal governed by subsection (c), the appellant shall, before any appeal under this section is allowed, file in the district court a bond payable to the appellee in the penal sum

of $100, with surety or sureties as approved by the court, or secured by cash or its equivalent deposited with the clerk, conditioned to satisfy any judgment for costs which may be entered against the appellant in the appellate division within 30 days after the entry thereof.

(c) Except as provided in section 6, the defendant shall, before any appeal under this section is allowed from a judgment of the superior court, a housing court, or a district court, rendered for the plaintiff for the possession of the land or tenements demanded in a case in which the plaintiff continues at the time of establishment of bond to seek to recover possession, give bond in a sum as the court orders, payable to the plaintiff, with sufficient surety or sureties approved by the court, or secured by cash or its equivalent deposited with the clerk, in a reasonable amount to be fixed by the court. In an appeal from a judgment of a district court the bond shall be conditioned to enter the action in the appellate division at the return day next after the appeal is taken. In an appeal from a judgment of the superior court or a housing court the bond filed shall be conditioned to enter the action in the appeals court. Appeals from judgments of the superior court or a housing court shall otherwise be governed by the Massachusetts Rules of Appellate Procedure. The bond shall also be conditioned to pay to the plaintiff, if final judgment is in plaintiff's favor, all rent accrued at the date of the bond, all intervening rent, and all damage and loss which the plaintiff may sustain by the withholding of possession of the land or tenements demanded and by any injury done thereto during the withholding, with all costs, until delivery of possession thereof to the plaintiff.

(d) In appeals from a judgment of the superior court, a housing court or a district court the deposit shall not be transmitted to the appeals court or the appellate division unless specifically requested by said appeals court or appellate division. The superior court, a housing court or a district court may give directions as to the manner of keeping the deposit. Upon final judgment for the plaintiff, all money then due to him may be recovered in an action on the bond provided for in the third paragraph of this section.

- *Waiver of summary process appeal bond for indigent*

(e) A party may make a motion to waive the appeal bond provided for in this section if the party is indigent as provided in section 27A of chapter 261. The motion shall, together with a notice of appeal and any supporting affidavits, be filed within the time limits set forth in this section. The court shall waive the requirement of the bond or security if it is satisfied that the person requesting the waiver has any defense which is not frivolous and is indigent as provided in said section 27A of said chapter 261. The court shall require any person for whom the bond or security provided for in subsection (c) has been waived to pay in installments as the same becomes due, pending appeal, all or any portion of any rent which shall become due after the date of the waiver. A court shall not require the person to make any other payments or deposits. The court shall forthwith make a decision on the motion. If the motion is made, no execution shall issue until the expiration of 6 days from the court's decision on the motion or until the expiration of the time specified in this section for the taking of appeals, whichever is later.

• *Appeal to Appellate Division from denial of waiver of summary process appeal bond*

(f) Any party aggrieved by the denial of a motion to waive the bond or who wishes to contest the amount of periodic payments required by the court may seek review of the decision as hereinafter provided. If the motion was made in the superior court or a housing court, the request for review shall be to the single justice of the appeals court at the next sitting thereof. If the motion was made in any district or municipal court, the request for review shall be to the appellate division then sitting pursuant to section 108 of chapter 231. The court receiving the request shall review the findings, the amount of bond or deposit, if any, and the amount of periodic payment required, if any, as if it were initially deciding the matter, and the court may withdraw or amend any finding or reduce or rescind any amount of bond, deposit or periodic payment when in its judgment the facts so warrant.

(g) Any party to the action may file a request for the review with the clerk of the court originally hearing the request to waive bond within the time period provided in this section for filing notice of appeal, or within 6 days after receiving notice of the decision of the court on the motion to waive bond, whichever is the later. The court shall then forward the motion, the court's findings and any other documents relevant to the appeal to the clerk of the court reviewing the decision which, upon receipt thereof, shall schedule a speedy hearing thereon and send notice thereof to the parties. Any request for review filed pursuant to this section shall be heard upon statements of counsel, memoranda and affidavits submitted by the parties. Further testimony shall be taken if the reviewing court shall find that the taking of further testimony would aid the disposition of the review.

(h) Upon the rendering of a decision on review, the reviewing court shall give notice of the decision to the parties and the defendant shall comply with the requirements of the decision within 5 days after receiving notice thereof. If the defendant fails to file with the clerk of the court rendering the judgment, the amount of bond, deposit or periodic payment required by the decision of the reviewing court within 5 days from receipt of notice of the decision, the appeal from the judgment shall be dismissed. Where a defendant seeks review pursuant to this section, no execution shall issue until the expiration of 5 days from the date defendant has received notice of the decision of the reviewing court.

G.L. c. 261, § 27D

Appeal to Appellate Division from denial of request under Indigent Court Costs Law

SECTION 20. Section 27D of chapter 261 of the General Laws, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following 3 sentences:- If the matter arises in the superior, the land, the probate or the housing court departments, the appeal shall be to a single justice of the appeals court at the next sitting thereof. If the matter arises in the juvenile court department, the appeal shall be to the superior court sitting in the nearest county or in Suffolk county. If the matter arises in the district court or Boston municipal court departments, the appeal shall be to the appellate division.

G.L. c. 262, § 2

SECTION 21. Chapter 262 of the General Laws is hereby amended by striking out section 2, as so appearing, and inserting in place thereof the following section:-

District Court civil filing fees

Section 2. The fees of the clerks of the district and Boston municipal court departments of the trial court in civil actions, shall be as follows:

For the entry of a complaint, third-party complaint, petition or other action, and for the filing of a motion to intervene as plaintiff, $150.

For the entry of supplementary proceedings under chapter 224, $25, which, together with the fees of witnesses and officers in the proceedings, shall be allowed the creditor as costs.

For the entry of a claim of trial by the superior court under section 104 of chapter 231, $150.

For approving or disapproving by the court of sureties on bonds or recognizances, $50.

For the entry of a civil appeal in the appellate division of the district court department, $100.

Notwithstanding the foregoing, for the entry of a complaint, petition, appeal or other action by the commonwealth, no fee shall be paid; but, if the commonwealth prevails in the action, the fee shall be taxed against the other party.

Remand/removal statutes inapplicable to cases filed under Civil One Trial System

SECTION 22. Sections 102C, 103, 104, 104A, 106 and 107 of chapter 231 of the General Laws shall not apply to civil actions commenced in the district court, Boston municipal court, and superior court departments on or after August 31, 2004, said commencement to be defined by Rule 3 of the Massachusetts Rules of Civil Procedure and Rule 2 of the Uniform Summary Process Rules. In Middlesex and Norfolk counties, sections 102C, 103, 104, 104A, 106 and 107 of chapter 231 of the General Laws shall not apply to any civil actions commenced under chapter 358 of the acts of 1996, as extended by chapter 157 of the acts of 1998, chapter 142 of the acts of 2000, and chapter 70 of the acts of 2002. In Berkshire and Essex counties, sections 102C, 103, 104, 104A, 106 and 107 of chapter 231 of the General Laws shall not apply to any civil actions commenced under chapter 142 of the acts of 2000 as extended by chapter 70 of the acts of 2002. In Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire and Nantucket counties, sections 102C, 103, 104, 104A, 106 and 107 of chapter 231 of the General Laws shall not apply to any civil actions commenced under chapter 70 of the acts of 2002.

This statute applicable to all procedures occurring on and after August 31, 2004 in cases filed on and after:

- *7/1/96 in Norfolk and Middlesex counties*
- *9/1/00 in Berkshire and Essex counties*
- *4/1/02 in Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire and Nantucket counties*

SECTION 23. This act shall be implemented by the chief justice for administration and management of the trial court and the chief justices of the district court, Boston municipal court, and superior court departments and shall apply to civil actions, commenced on or after August 31, 2004, the commencement to be defined by Rule 3 of the Massachusetts Rules of Civil Procedure and Rule 2 of the Uniform Summary Process Rules. In Middlesex and Norfolk counties, this act shall govern in civil actions commenced under chapter 358 of the acts of 1996, as extended by chapter 157 of the acts of 1998, chapter 142 of the acts of 2000, and chapter 70 of the acts of 2002, and pending on August 31, 2004 regarding any procedures occurring on or after August 31, 2004. In Berkshire and Essex counties, this act shall govern in civil actions commenced

- *8/31/04 in Plymouth, Suffolk and Worcester counties*

under chapter 142 of the acts of 2000 as extended by chapter 70 of the acts of 2002 and pending on August 31, 2004 regarding any procedure occurring on or after August 31, 2004. In Barnstable, Bristol, Dukes, Franklin, Hampden, Hampshire and Nantucket counties this act shall govern in civil actions commenced under chapter 70 of the acts of 2002 and pending on August 31, 2004 regarding any procedure occurring on or after August 31, 2004.

Trial Court of the Commonwealth

Boston Municipal Court Department District Court Department

Joint Standing Order No. 1-04

CIVIL CASE MANAGEMENT

Effective August 31, 2004

I. PURPOSE AND APPLICABILITY

The purpose of this Joint Order is to establish case management procedures that will facilitate the prompt and efficient disposition of civil cases and reduce the expense and delay of civil litigation in the Boston Municipal Court Department and the District Court Department.

This Order applies to all tort and contract actions in which money damages are sought ("civil actions") and which have been commenced in the Boston Municipal Court Department and the District Court Department on or after August 31, 2004. In the District Court Department, this Order shall also apply to all civil actions previously governed by District Court Standing Order 1-98 regarding any procedures occurring on or after that date. Sections VI (Motion Practice) and VII (Continuances) of this Order also apply to all civil actions pending in the divisions of the Boston Municipal Court Department and in the divisions of the District Court Department in Plymouth, Suffolk and Worcester Counties, regardless of the date of commencement of such actions.

This Order supersedes Boston Municipal Court Department Standing Order 1-88 and District Court Department Standing Orders 1-88 and 1-98 with respect to all civil actions and all procedures to which this Order applies.

II. GENERAL PRETRIAL SCHEDULE

It shall be the responsibility of counsel to complete the preparation of his or her case by the date of the pretrial conference as scheduled in accordance with Section IV A, unless the court orders otherwise. Discovery and pretrial motions, including motions pursuant to Mass. R. Civ. P. 12, 15, 19, 20 and 56, and such other motions as may be prescribed by the court, shall be filed, marked and caused to be heard by such

date unless the court permits otherwise for good cause shown.

III. CASE MANAGEMENT CONFERENCE

A. Scheduling. Upon the filing of an answer by any defendant, the court shall immediately give notice to all parties in the action of a Case Management Conference pursuant to Mass. R. Civ. P. 16 to be held on a date certain within four months of the date of filing of such answer, or sooner if directed by the court or jointly requested by all parties. Such notice shall inform the parties of the purposes of the conference and the desirability of addressing any discovery issues prior to the conference. Counsel or pro se litigants shall appear in person at the Case Management Conference. The court may impose sanctions, including dismissal, default and assessment of costs, for failure to attend the conference without good cause.

B. Purpose. The purpose of the Case Management Conference shall be to (1) discuss settlement progress and opportunities for settlement, and offer early intervention alternative dispute resolution; (2) consider case management orders proposed by any party, or by the court, regarding limitation or sequencing of discovery events, disclosure or limitation of expert witnesses, motion briefing, and other matters that would reduce expense and delay of litigation, and enter appropriate orders; (3) enter judgment for relief or dismissal, and schedule hearing for assessment of damages if necessary; and (4) assign a firm date for pretrial conference for all cases which are not yet ready for trial; (5) assess the trial-readiness of cases; (6) assign a firm trial date for cases that are ready for trial.

Among the orders that a Judge may impose at the Case Management Conference under item (2), above, is an "Order for Early Disclosure," requiring compliance with the terms set forth in Section III D.

Notice of the date of trial or Pretrial Conference shall be given to the parties at the Case Management Conference after consultation with counsel.

In all cases scheduled for trial, the person conducting the Case Management Conference shall prepare a Pretrial Conference report. In all cases scheduled for Pretrial Conference, the person conducting the Case Management Conference shall prepare a Case Management Conference report summarizing the results of the conference.

C. Judicial officer. The Case Management Conference shall be conducted by a Judge or, if a Judge is unavailable, by a Clerk-Magistrate or Assistant Clerk-Magistrate designated by the Chief Justice of the Boston Municipal Court Department or the Chief Justice of the District Court Department in accordance with G.L. § 221, § 62C and Trial Court Rule II(3)(a) to conduct such conferences. Only a Judge may issue or approve any orders arising from the Case Management Conference.

D. Mandatory Early Disclosure. If ordered by the court at the Case Management Conference as provided above in section III B, each party shall provide the discovery specified below without a request by any opposing party. Unless otherwise agreed by the parties or ordered by the court, such disclosure shall be completed no later than 90 days after completion of the Case Management Conference.

1. Actions Involving Tort Claims.

(**a) Plaintiff.** A party asserting a tort claim shall provide to all other parties copies of medical bills and medical records in its possession, custody, or control, or provide written authorizations signed by the patient to permit opposing counsel to obtain such documents; all accident reports, sketches and photographs of the accident scene; property damage or injury reports; an itemized list of special damages and non-medical damages known to counsel; admissions by the opposing party; names and addresses of witnesses; reports of all government agencies or officials which investigated the event giving rise to the claim; personal injury protection (PIP) applications and documents; the identity of any person, firm or entity who may be responsible for the plaintiff's injury; and any documents that counsel agree to disclose without formal discovery.

(b) Defendant. A party defending against a tort claim shall provide to all other parties copies of all primary and excess insurance policies that may be available to satisfy a judgment; copies of all documents reserving an insurer's right to deny coverage; all accident reports, sketches and photographs of the accident scene; property damage or injury reports; medical examination reports of the plaintiff (which the defendant intends to introduce as evidence at trial); admissions by the opposing party; names and addresses of witnesses; reports of government agencies or officials which investigated the event giving rise to the claim; and any documents that counsel agree to disclose without formal discovery.

2. Actions Involving Contract Claims.

(a) Plaintiff. A party asserting a contract claim shall provide to all other parties copies of the contracts or written agreements that give rise to the claim, including warranties, notes, and guaranties; names and addresses of witnesses; an itemized list of special damages; admissions by the opposing party; and any documents that counsel agree to disclose without formal discovery.

(b) Defendant. A party defending a contract claim shall provide to all other parties copies of all primary and excess insurance policies that may be available to satisfy a judgment; copies of all documents reserving an insurer's right to deny coverage; any contracts or written agreements that give rise to the claim, including warranties, notes and guaranties; names and addresses of witnesses; admissions by the opposing party; and any documents that counsel agree to disclose without formal discovery.

3. Expert Witnesses.

A party shall identify any person who may be used as an expert witness at trial in advance of the pretrial hearing date. Except as otherwise stipulated or directed by the court, this disclosure shall be accompanied by a written report prepared by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding five years; the compensation to be paid for the study and testimony; and a listing of any cases in which the witness has testified as a witness at trial or by deposition within the preceding three years.

4. Contested Discovery.

Before filing any discovery motion, including any motion for sanctions or for a protective order, counsel for each of the parties shall confer in good faith to narrow the areas of disagreement to the greatest possible extent. It shall be the responsibility of counsel for the moving party to arrange for the conference. Any motion to compel discovery shall include a certificate of counsel filed by the moving party certifying that he has conferred with opposing counsel as required by this section.

IV. PRETRIAL CONFERENCE

A. Scheduling and pretrial memorandum. All cases not disposed or assigned a trial date at the Case Management Conference shall be assigned a firm date for Pretrial Conference when they are expected to be ready for trial, such date to be not later than the end of the tenth month after the month in which the action was filed, or such later date as the court may order for good cause shown. Upon scheduling an action for Pretrial Conference, the court shall issue a notice of Pretrial Conference requiring the parties to prepare a joint pretrial memorandum for use at the Pretrial Conference. Failure of any party to attend the Pretrial Conference or prepare a joint pretrial memorandum may result in sanctions, including dismissal, default and assessment of costs.

B. Agenda, report and Trial Order. The purpose of the Pretrial Conference is to discuss settlement opportunities and to achieve settlement or, for cases which do not settle, to assign a firm trial date. The person conducting the Pretrial Conference shall thereafter prepare a pretrial conference report. For actions requiring a trial date, notice of such date shall be given to all parties at the Pretrial Conference after consultation with counsel. Upon scheduling a case for trial, the court shall issue a Trial Order requiring the parties to prepare for trial. Failure of any party to prepare for trial as required by such order may result in preclusion of evidence or other sanctions in the discretion of the trial judge.

C. Judicial officer. The Pretrial Conference shall be conducted by a Judge or, if a Judge is unavailable, by a Clerk-Magistrate or Assistant Clerk-Magistrate who has been designated by the Chief Justice of the Boston Municipal Court Department or the Chief Justice of the District Court Department in accordance with G.L. c. 221, § 62C and Trial Court Rule II(3)(a) to conduct such conferences, or by alternative dispute resolution personnel approved by the court. Only a Judge may issue or approve any orders arising from the Pretrial Conference.

V. DISMISSAL FOR LACK OF SERVICE OR FAILURE TO ACT ON DEFAULT

All actions in which there is no timely service of the complaint or no timely action upon default shall be dismissed as follows:

A. Dismissal for lack of service. After commencement of each action, the Clerk-Magistrate shall review the docket to determine whether the plaintiff has complied with the time limits for service pursuant to Mass. R. Civ. P. 4(j), together with any extensions allowed by the court pursuant to Mass. R. Civ. P. 6. Upon determining noncompliance, the Clerk-Magistrate shall issue notice of dismissal of the action as provided by Rule 4(j).

B. Dismissal nisi for failure to act on default. Where an action has remained on the docket for eight months without an answer or defensive motion having been filed by any defendant, the Clerk-Magistrate shall enter an Order Nisi for Dismissal advising the plaintiff that a Judgment of Dismissal will be entered 30 days from the date of the Order unless the plaintiff either (1) requests entry of default and moves for default judgment in accordance with Mass. R. Civ. P. 55, or (2) reports in writing that the case is active and requests that it not be dismissed.

VI. MOTION PRACTICE

A. General. Pursuant to Mass. R. Civ. P. 6 and 78, all motions shall be accompanied by an affidavit of notice setting forth the date and time of hearing on the motion. All motions shall be scheduled by counsel for the moving party on the court's usual civil motion hearing day as published by the court, or on the date the case is scheduled for Case Management Conference or Pretrial Conference, or as otherwise ordered by the court.

B. Agreed Upon Motions. Motions filed by the parties jointly or where the moving party avers that all other parties agree with the outcome sought by the motion may be submitted for a ruling on the papers without the presence of the parties. Such motions shall be accompanied by an express request that the court rule without a hearing. This procedure shall be available only in cases where all parties are represented by counsel.

C. Discovery and summary judgment motions. All discovery motions filed pursuant to Mass. R. Civ. P. 26 or 37 shall include copies of the discovery requests and responses which are the subject of the motion. Motions for summary judgment which rely on any pleading or discovery shall include copies of such pleadings or discovery with the motion. Any discovery or summary judgment motions which do not include such copies may be denied without prejudice.

D. Opposition procedure. In actions where all parties are represented by counsel, motions may be acted upon by the court without a hearing in the following manner.

1. **Designation by moving party.** A moving party who chooses to use this procedure shall state on the caption of the motion and on the affidavit of notice, "SUBJECT TO OPPOSITION PROCEDURE," and file and serve such motion at least 14 days before the motion hearing date. If no other party timely files and serves an "OPPOSITION TO MOTION" as described below, the motion will be considered by the court without a hearing or the attendance of any counsel.

2. **Opposition by other party.** If any other party opposes the motion or otherwise seeks to be heard, such party shall file and serve a document captioned "OPPOSITION TO MOTION" at least five days before the motion hearing date. If any party timely files and serves such an "OPPOSITION TO MOTION," all counsel shall be required to attend the scheduled hearing, unless in such "OPPOSITION TO MOTION" the party expressly waives the right to such hearing, in which case the motion will be considered by the court without a hearing or the attendance of any counsel.

3. **Exempted motions.** This opposition procedure shall not apply to the following motions: motions to continue Case Management Conference, Pretrial Conference or trial; ex parte motions; petitions for approval of settlement by a minor; motions seeking sanctions of any kind; motions for preliminary and permanent injunction; motions for a receiver; motions to vacate a default judgment; motions for relief from judgment; motions for a new trial; motions for reconsideration; and any motion ordered by a Judge to be decided after hearing.

4. **Notice of decision.** When a motion is considered under the opposition procedure, the court shall act upon, and send written notice of such action to all parties, within 14 days after the hearing date.

VII. CONTINUANCES

A. General. Continuances of Case Management Conferences, Pretrial Conferences and trials shall be disfavored because of the advance notice to, and the participation of counsel in, the scheduling of these events. Continuances of these events will be allowed for good cause only, and any continuance shall be to a date and event certain. No action shall be "continued generally" or taken off the schedule for any reason.

B. Form of motions. Requests for continuances shall be made only by written motion supported by an affidavit of counsel, and counsel shall send a copy of the continuance request to his or her client(s) by first-class mail. All motions for continuance shall include a list of any days within the next 30 days that counsel for any party is unavailable for the continued event.

C. Joint requests to continue case management conference or pretrial conference. The Clerk-Magistrate or an Assistant Clerk designated by the Clerk-Magistrate may allow a joint request to continue a Case Management Conference or Pretrial Conference after review of the motion without hearing, provided that the event shall be continued not more than once and for not more than 30 days.

D. Trial continuances, opposed continuances and repeat continuances. Motions to continue a trial, whether or not agreed to by the parties, may be allowed only by a Judge assigned to the civil trial session or, in the absence or unavailability of such Judge, by the Presiding Justice or other Judge designated by the Presiding Justice. Motions to continue a Case Management Conference or Pretrial Conference which are opposed by any party, as well as motions to continue an event previously continued pursuant to Section VII C above, shall be marked and heard as motions before a Judge. Counsel and pro se litigants shall not be excused from attending the scheduled event unless notified by the court that the event has been continued. No employee or officer of the court shall be authorized to allow continuances of trials or conferences, except as provided in this section.

Charles R. Johnson, Chief Justice
Boston Municipal Court Department

Lynda M. Connolly, Chief Justice
District Court Department

Issued August 23, 2004

STATEMENT OF DAMAGES G.L. c. 218, § 19A (a)	DATE FILED *(to be added by Clerk)*	DOCKET NO. *(to be added by Clerk)*	**Trial Court of Massachusetts** **District Court Department**

PLAINTIFF(S)	DEFENDANT(S)
INSTRUCTIONS: THIS FORM MUST BE COMPLETED AND FILED WITH THE COMPLAINT OR OTHER INITIAL PLEADING IN ALL DISTRICT COURT CIVIL ACTIONS SEEKING MONEY DAMAGES.	_____ DISTRICT COURT

TORT CLAIMS	**AMOUNT**
A. Documented medical expenses to date:	
1. Total hospital expenses:	$ _____
2. Total doctor expenses:	$ _____
3. Total chiropractic expenses:	$ _____
4. Total physical therapy expenses:	$ _____
5. Total other expenses *(Describe)*: _____	$ _____
SUBTOTAL:	$ _____
B. Documented lost wages and compensation to date:	$ _____
C. Documented property damages to date:	$ _____
D. Reasonably anticipated future medical and hospital expenses:	$ _____
E. Reasonably anticipated lost wages:	$ _____
F. Other documented items of damage *(Describe)*: _____	$ _____
G. Brief description of Plaintiff's injury, including nature and extent of injury *(Describe)*:	
For this form, disregard double or treble damage claims; indicate single damages only. **TOTAL:**	$

CONTRACT CLAIMS	**AMOUNT**
Provide a detailed description of claim(s): _____	$ _____
	$ _____
	$ _____
For this form, disregard double or treble damage claims; indicate single damages only. **TOTAL:**	$

ATTORNEY FOR PLAINTIFF (OR PRO SE PLAINTIFF):	DEFENDANT'S NAME AND ADDRESS:
Signature _____ Date _____	
Print or Type Name _____ B.B.O.# _____	
Address _____	

TRANSMITTAL OF APPEAL **FROM JUDGMENT OF DISMISSAL** **FOR WANT OF PROCEDURAL AMOUNT**	DOCKET NO.	**Trial Court of Massachusetts** **District Court Department**
PLAINTIFF(S) **VS.** DEFENDANT(S)		COURT DIVISION

TRANSMITTAL OF APPEAL
FROM JUDGMENT OF DISMISSAL
FOR WANT OF PROCEDURAL AMOUNT
(G.L. c. 218, § 19A)

To the Clerk of the Appeals Court:

Enclosed are copies of the following documents for appeal claimed by the plaintiff on this Court's judgment of dismissal for want of procedural amount under G.L. c. 218, § 19A:

1. The plaintiff's Complaint.
2. The plaintiff's Statement of Damages.
3. The defendant's answer seeking the dismissal and the plaintiff's response, if any.
4. The judge's written findings and reasons justifying the dismissal.
5. The following other documents on file (if any) relevant to the appeal:

_____

_____

_____.

_____
Clerk-Magistrate/Asst. Clerk Date

8/04

ORDER NISI FOR DISMISSAL **FOR FAILURE TO ACT ON DEFAULT**	DOCKET NO.	**Trial Court of Massachusetts** **District Court Department**
PLAINTIFF(S) **VS.** DEFENDANT(S)		COURT DIVISION

ORDER NISI FOR DISMISSAL
FOR FAILURE TO ACT ON DEFAULT
(Joint Standing Order 1-04)

To all parties:

Pursuant to BMC & District Court Joint Standing Order 1-04, § V.B., an Order Nisi is hereby entered that the above-captioned matter be dismissed based on the pendency of such action for eight months or more without the filing of an answer or defensive motion.

You are hereby notified that a Judgment of Dismissal will be entered 30 days from the entry of this Order Nisi unless the plaintiff, prior to that date: (1) files a request for entry of default and default judgment in accordance with Mass. R. Civ. P. 55, or (2) files a written report that the case is active and a request that it not be dismissed.

NOTICE OF ENTRY OF ORDER

Pursuant to Mass. R. Civ. P. 77(d) and 79(a), this Order has been entered on the docket on the "Date Order Entered" shown below, and this notice is being sent to all parties.

_____ _____

Date Order Entered Clerk-Magistrate/Asst. Clerk

8/04

NOTICE OF ENTRY OF JUDGMENT OF DISMISSAL FOR FAILURE TO ACT ON DEFAULT	DOCKET NO.	Trial Court of Massachusetts District Court Department
PLAINTIFF(S) **VS.** DEFENDANT(S)		COURT DIVISION

NOTICE OF ENTRY OF JUDGMENT OF DISMISSAL
FOR FAILURE TO ACT ON DEFAULT
(Joint Standing Order 1-04)

To all parties:

Pursuant to the provisions of BMC & District Court Joint Standing Order 1-04, § V.B., Judgment of Dismissal for failure to act on default was entered on the docket in the above-captioned action on _____.

_____
Clerk-Magistrate/Asst. Clerk Date

8/04

NOTICE OF CASE MANAGEMENT CONFERENCE	DOCKET NO.	Trial Court of Massachusetts District Court Department
PLAINTIFF(S) **VS.** DEFENDANT(S)		COURT DIVISION

Pursuant to Mass. R. Civ. P. 16 and G.L. c. 221, § 62C, counsel for all parties to this action are **ORDERED** to appear at a case management conference on _____
CONFERENCE DATE

at _____ at the _____ District Court, _____
TIME COURT COURTROOM

to report on the status of this action.

Agenda. The purpose of the case management conference is to discuss settlement progress and opportunities for settlement; offer and conduct early-intervention alternative dispute resolution; establish deadlines for discovery, amendment of pleadings, addition of parties, dispositive motions, and disclosure of expert witnesses; resolve any discovery dispute and address pending motions; review any proposed case management orders submitted by any party; enter case management orders as appropriate; determine trial readiness of the case; and assign a firm trial date for cases ready for trial or a firm pretrial conference date for all cases not ready for trial.

Obligations of Counsel. Counsel shall be familiar with the facts of the case and shall have authority to settle and to select firm dates for trial or pretrial conference. Clients or persons with settlement authority shall be available for telephone consultation with counsel during the case management conference. Counsel shall serve any proposed case management orders and motions to opposing counsel in advance of the case management conference. Counsel are **not** required to prepare any memorandum for the case management conference.

Continuances. Request for continuances of the case management conference for good cause shall be addressed to the undersigned in writing and shall list all dates in the next thirty days that counsel is unavailable for the case management conference.

Liaison. Please call _____ at _____, with any questions
CONTACT PERSON TELEPHONE NO.

or to report any settlement.

_____
Justice Date

8/04

CASE MANAGEMENT CONFERENCE REPORT	DOCKET NO.	Trial Court of Massachusetts District Court Department
PLAINTIFF(S) **VS.** DEFENDANT(S)		COURT DIVISION

(To be completed following every case management conference except those resulting in the scheduling of a trial.)

The following summarizes the results of the Case Management Conference held in this action on

_____:
(Date(s)

☐ Possibility of settlement discussed. _____

☐ Alternative dispute resolution attempted. _____

☐ Parties report the following stipulations and/or agreements:

_____

_____

_____

☐ Orders were issued as follows (judge only):

_____

_____

_____

_____

☐ Pretrial Conference scheduled for _____ and notice given to parties.
(Date)

_____
Signature of Justice/Clerk-Magistrate/Assistant Clerk
who conducted the conference

8/04

NOTICE OF PRETRIAL CONFERENCE	DOCKET NO.	Trial Court of Massachusetts District Court Department
PLAINTIFF(S) **VS.** DEFENDANT(S)		COURT DIVISION

A pretrial conference will be held on _____

CONFERENCE DATE

at _____ at the _____ District Court, _____.

TIME COURT COURTROOM

Pursuant to Mass. R. Civ. P. 16, the parties are **ORDERED** as follows:

1. **Settlement.** Plaintiff counsel shall contact opposing counsel to discuss settlement in advance of the conference. Defense counsel shall, after conferring with the defendant(s), respond to any settlement demand made by the plaintiff(s). Counsel for each party shall discuss with their client(s) the estimated costs of further litigation through trial, and shall certify in the pretrial memorandum that such discussion has occurred.

2. **Memorandum.** At least three weeks before the conference, plaintiff counsel shall prepare and serve a draft joint pretrial memorandum to opposing counsel, consisting of ***no more than 5 pages***, setting forth: (A) a concise summary of the claim and defenses; (B) a list of witnesses, including experts, and a concise summary of the testimony anticipated from each witness; (C) facts established by pleadings, stipulation or admission; (D) an itemized list of special damages, if any; (E) the estimated length of trial; (F) certification by each counsel that their client(s) have been apprised of estimated litigation costs. At least two weeks before the conference, defense counsel shall prepare and serve any revisions to such memorandum. Counsel for all parties shall thereafter confer and, at least one week before the conference, file a joint pre-trial memorandum with the court.

3. **Authority.** Counsel are expected to have full authority to settle and file stipulations of dismissal or agreements for judgment at the pretrial conference. All parties shall be available for telephone consultation by counsel during the pretrial conference.

4. **Continuances.** Requests for continuances of the pretrial conference shall be made in writing and addressed to the attention of _____.

NAME AND TITLE

Requests shall specify the next pretrial conference dates that all counsel are available.

5. **Trial Date.** A firm trial date will be set by the Court and counsel if the case does not settle at the pretrial conference.

6. **Sanctions.** Failure to comply with this order, or failure to appear at the pretrial conference, may result in sanctions including but not limited to assessment of costs, entry of default or dismissal.

7. **Liaison.** Please refer all questions, as well as reports of settlement in advance of the pretrial conference, to _____ at _____.

NAME AND TITLE TELEPHONE NO.

_____

Justice Date

8/04

PRETRIAL CONFERENCE REPORT	DOCKET NO.	**Trial Court of Massachusetts** **District Court Department**
PLAINTIFF(S) **VS.** DEFENDANT(S)		COURT DIVISION

The following report summarizes the matters dealt with during the Pretrial Conference on: _____.
CONFERENCE DATE

☐ Case reported settled. 30-day Order of Dismissal Nisi ☐ all counsel informed. ☐ to be sent to all parties.

☐ Plaintiff(s) failed to appear. Case to be dismissed.

☐ Defendant(s) failed to appear. Default to be entered.

☐ Plaintiff(s)/Defendant(s) failed to comply with Pretrial Order. Counsel should show cause why sanctions should not be imposed.

☐ The case is ready for trial and, after consultation with counsel, is assigned a firm date for trial on _____
DATE

at _____ a.m./p.m. in the _____.
TIME COURTROOM

☐ Bench Trial ☐ Jury Trial

☐ Trial Order: ☐ has been given to counsel in hand. ☐ to be sent to all parties.

☒ Trial is estimated to take _____ hours/days.

☒ Estimated number of witnesses for Plaintiff(s): _____. For Defendant(s): _____.

☒ Percent Rating for likelihood of trial:

Case Definitely Will Settle ⇦ **10% 20% 30% 40% 50% 60% 70% 80% 90% 100%** ⇨ **Case Definitely Will Try**

☐ Case referred to mediation at: _____ on _____ at _____ am/pm.

☐ Case not ready for trial. Scheduled for further pretrial conference on _____ at _____ am/pm.

in _____.
COURTROOM

☐ Summary jury trial to be conducted pursuant to order given in hand to counsel.

☐ The parties report the following stipulations and/or agreements:

_____

_____

_____

Remarks/Comments:

_____

_____

_____

_____
Justice/Clerk-Magistrate/Asst.Clerk-Magistrate/Special Master Date

8/04

TRIAL ORDER	DOCKET NO.	Trial Court of Massachusetts District Court Department
PLAINTIFF(S) **VS.** DEFENDANT(S)		COURT DIVISION

After pretrial/conciliation conference and upon scheduling of this matter for trial on _____
TRIAL DATE

at _____ before the Court (_____, J.) it is **ORDERED** as follows:
TIME JUDGE'S NAME

1. **Witness Lists.** Counsel for each party shall submit a list of witnesses expected to testify at trial, containing the name and address of each prospective witness, to the trial judge at the beginning of the trial. Persons not included in such lists may be precluded from testifying, in the discretion of the trial judge.

2. **Agreed Exhibits.** Counsel for each party shall confer in advance of the trial for the purpose of agreeing to exhibits for trial. All agreed exhibits shall be pre-marked by counsel with exhibit labels bearing numerical designations (*e.g.,* Exhibit 1, Exhibit 2, etc.) Counsel shall submit a list of Agreed Exhibits, containing the exhibit numbers and a summary description of each exhibit, to the trial judge at the beginning of the trial.

3. **Proposed Exhibits.** All proposed exhibits on which counsel do not agree shall be pre-marked by counsel for the offering party with exhibit labels bearing alphabetical designations for identification (*e.g.,* Plaintiff's Exhibit A for ID, Defendant's Exhibit A for ID, etc.) Each counsel shall submit a list of proposed exhibits, containing the exhibit letters and summary descriptions of the exhibits, to the trial judge at the beginning of the trial. Any exhibit offered at trial which is neither agreed to nor identified on the proposed exhibits lists may be precluded, in the discretion of the trial judge.

4. **Stipulations.** Counsel for each party shall confer in advance of the trial for the purpose of stipulating to all material facts which are not in dispute. Counsel shall submit a list of any stipulations to the trial judge at the beginning of the trial.

5. **Audio-Visual Expert Witness Depositions for Trial.** To reduce the expense of litigation and to avoid delay of trial because of unavailability of expert witnesses, leave is hereby granted for any party, upon notice to opposing counsel and in accordance with Mass. R. Civ. P. 30A(m), to conduct audio-visual dispositions of their treating physician or other expert witnesses in lieu of oral testimony at trial. Notwithstanding Mass. R. Civ. P. 30A(m)(2) & (4), notice of the audio-visual deposition may be served simultaneously with service of the witness' curriculum vitae and written report, and evidentiary objections shall be filed with the trial judge at the beginning of the trial. Any objections to this procedure shall be filed and heard as discovery motions in advance of the trial date.

6. **Summaries of Voluminous Exhibits.** Counsel are encouraged to prepare summaries of voluminous exhibits, such as medical records and bills, to assist the trial judge's review of the facts. See Proposed Mass. R. Evid. 1006 (1980).

7. **Non-Massachusetts Authorities.** Counsel who submit any requested rulings of law, jury instructions or memoranda of law which cite federal or other non-Massachusetts cases and statutes are requested to append copies of such cases or statutes for the convenience of the trial judge.

8. **Proposed Jury Instructions.** In cases to be tried to a jury, counsel are directed to file any requested jury instructions with the court before the trial begins, without prejudice to supplementation of such request at the close of the evidence. For the convenience of the trial judge, requested jury instructions shall be consecutively numbered with instructions concerning separate topics listed on separate pages.

(SEE REVERSE SIDE FOR ADDITIONAL INSTRUCTIONS)

8/04

9. **Continuances.** Any motions for continuance of the trial date shall include affidavits of counsel in accordance with Mass. R. Civ. P. 40 and shall be sent directly to the attention of _____
NAME AND TITLE
to expedite decision by the Justice assigned to the Civil Trial Session or, if that Justice is not available, by the First Justice. Trial dates may be continued for good cause only.

10. **Settlement.** Counsel in cases which settle before the trial date shall notify _____
NAME AND TITLE
at _____ to permit scheduling of other cases for trial.
TELEPHONE NO.

_____
Justice Date

8/04